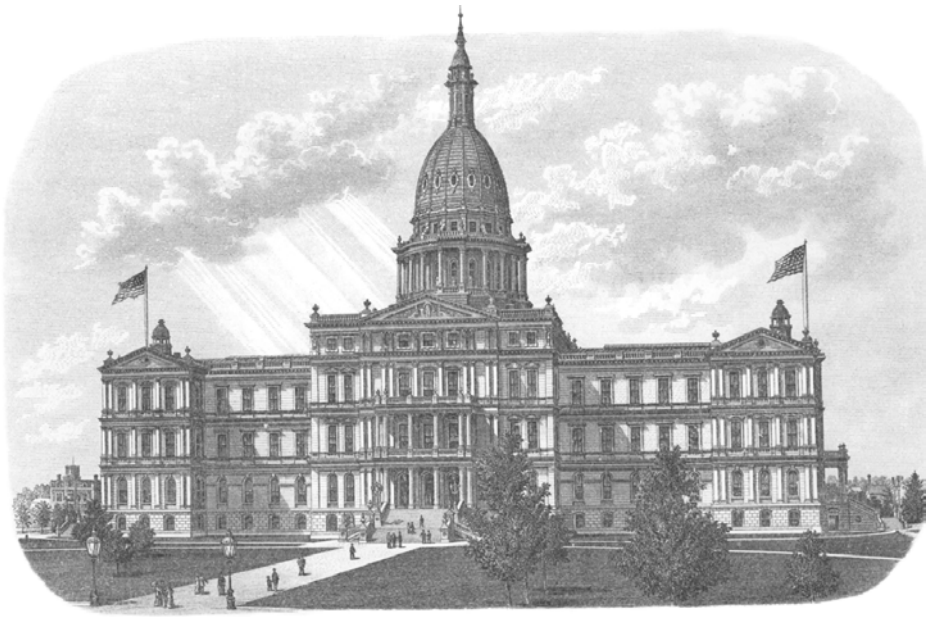
Michigan Register

Issue No. 9– 2007 (Published June 1, 2007)



GRAPHIC IMAGES IN THE

MICHIGAN REGISTER

COVER DRAWING

Michigan State Capitol:

This image, with flags flying to indicate that both chambers of the legislature are in session, may have originated as an etching based on a drawing or a photograph. The artist is unknown. The drawing predates the placement of the statue of Austin T. Blair on the capitol grounds in 1898.

(Michigan State Archives)

PAGE GRAPHICS

Capitol Dome:

The architectural rendering of the Michigan State Capitol's dome is the work of Elijah E. Myers, the building's renowned architect. Myers inked the rendering on linen in late 1871 or early 1872. Myers' fine draftsmanship, the hallmark of his work, is clearly evident.

Because of their size, few architectural renderings of the 19th century have survived. Michigan is fortunate that many of Myers' designs for the Capitol were found in the building's attic in the 1950's. As part of the state's 1987 sesquicentennial celebration, they were conserved and deposited in the Michigan State Archives.

(Michigan State Archives)

East Elevation of the Michigan State Capitol:

When Myers' drawings were discovered in the 1950's, this view of the Capitol – the one most familiar to Michigan citizens – was missing. During the building's recent restoration (1989-1992), this drawing was commissioned to recreate the architect's original rendering of the east (front) elevation.

(Michigan Capitol Committee)

Michigan Register

Published pursuant to § 24.208 of
The Michigan Compiled Laws

Issue No. 9— 2007
(This issue, published June 1, 2007, contains
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Peter Plummer, Executive Director, State Office of Administrative Hearings and Rules; **Deidre O'Berry**, Administrative Rules Analyst for Operations and Publications.

Jennifer M. Granholm, Governor

John D. Cherry Jr., Lieutenant Governor

PREFACE

PUBLICATION AND CONTENTS OF THE MICHIGAN REGISTER

The State Office of Administrative Hearings and Rules publishes the *Michigan Register*.

While several statutory provisions address the publication and contents of the *Michigan Register*, two are of particular importance.

MCL 24.208 states:

Sec. 8 (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

(a) Executive orders and executive reorganization orders.
(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.
(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.
(d) Proposed administrative rules.
(e) Notices of public hearings on proposed administrative rules.
(f) Administrative rules filed with the secretary of state.
(g) Emergency rules filed with the secretary of state.
(h) Notice of proposed and adopted agency guidelines.
(i) Other official information considered necessary or appropriate by the State Office of Administrative Hearings and Rules.
(j) Attorney general opinions.
(k) All of the items listed in section 7(1) after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, 1978 PA 368, MCL 333.22215 and 333.22217.

(2) The State Office of Administrative Hearings and Rules shall publish a cumulative index for the Michigan register.

(3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.

(4) If publication of an agency's proposed rule or guideline or an item described in subsection (1)(k) would be unreasonably expensive or lengthy, the State Office of Administrative Hearings and Rules may publish a brief synopsis of the proposed rule or guideline or item described in subsection (1)(k), including information on how to obtain a complete copy of the proposed rule or guideline or item described in subsection (1)(k) from the agency at no cost.

(5) An agency shall transmit a copy of the proposed rules and notice of public hearing to the State Office of Administrative Hearings and Rules for publication in the Michigan register.

MCL 4.1203 states:

Sec. 203. (1) The Michigan register fund is created in the state treasury and shall be administered by the State Office of Administrative Hearings and Rules. The fund shall be expended only as provided in this section.

(2) The money received from the sale of the Michigan register, along with those amounts paid by state agencies pursuant to section 57 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.257, shall be deposited with the state treasurer and credited to the Michigan register fund.

(3) The Michigan register fund shall be used to pay the costs preparing, printing, and distributing the Michigan register.

(4) The department of management and budget shall sell copies of Michigan register at a price determined by the State Office of Administrative Hearings and Rules not to exceed cost of preparation, printing, and distribution.

(5) Notwithstanding section 204, beginning January 1, 2001, the State Office of Administrative Hearings and Rules shall make the text of the Michigan register available to the public on the internet.

(6) The information described in subsection (5) that is maintained by the State Office of Administrative Hearings and Rules shall be made available in the shortest feasible time after the information is available. The information described in subsection (5) that is not maintained by the State Office of Administrative Hearings and Rules shall be made available in the shortest feasible time after it is made available to the State Office of Administrative Hearings and Rules.

(7) Subsection (5) does not alter or relinquish any copyright or other proprietary interest or entitlement of this state relating to any of the information made available under subsection (5).

(8) The State Office of Administrative Hearings and Rules shall not charge a fee for providing the Michigan register on the internet as provided in subsection (5).

(9) As used in this section, "Michigan register" means that term as defined in section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205.

CITATION TO THE MICHIGAN REGISTER

The *Michigan Register* is cited by year and issue number. For example, 2001 MR 1 refers to the year of issue (2001) and the issue number (1).

CLOSING DATES AND PUBLICATION SCHEDULE

The deadlines for submitting documents to the State Office of Administrative Hearings and Rules for publication in the *Michigan Register* are the first and fifteenth days of each calendar month, unless the submission day falls on a Saturday, Sunday, or legal holiday, in which event the deadline is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Documents filed or received after 5:00 p.m. on the closing date of a filing period will appear in the succeeding issue of the *Michigan Register*.

The State Office of Administrative Hearings and Rules is not responsible for the editing and proofreading of documents submitted for publication.

Documents submitted for publication should be delivered or mailed in an electronic format to the following address: MICHIGAN REGISTER, State Office of Administrative Hearings and Rules, Ottawa Building - Second Floor, 611 W. Ottawa, P.O. Box 30695, Lansing, MI 48933.

RELATIONSHIP TO THE MICHIGAN ADMINISTRATIVE CODE

The *Michigan Administrative Code* (1979 edition), which contains all permanent administrative rules in effect as of December 1979, was, during the period 1980-83, updated each calendar quarter with the publication of a paperback supplement. An annual supplement contained those permanent rules, which had appeared in the 4 quarterly supplements covering that year.

Quarterly supplements to the Code were discontinued in January 1984, and replaced by the monthly publication of permanent rules and emergency rules in the *Michigan Register*. Annual supplements have included the full text of those permanent rules that appear in the twelve monthly issues of the *Register* during a given calendar year. Emergency rules published in an issue of the *Register* are noted in the annual supplement to the Code.

SUBSCRIPTIONS AND DISTRIBUTION

The *Michigan Register*, a publication of the State of Michigan, is available for public subscription at a cost of $400.00 per year. Submit subscription requests to: State Office of Administrative Hearings and Rules, Ottawa Building - Second Floor, 611 W. Ottawa, P.O. Box 30695, Lansing, MI 48933. Checks Payable: State of Michigan. Any questions should be directed to the State Office of Administrative Hearings and Rules (517) 335-2484.

INTERNET ACCESS

The *Michigan Register* can be viewed free of charge on the Internet web site of the State Office of Administrative Hearings and Rules: www.michigan.gov/cis/0,1607,7-154-10576_35738---,00.html

Issue 2000-3 and all subsequent editions of the *Michigan Register* can be viewed on the State Office of Administrative Hearings and Rules Internet web site. The electronic version of the *Register* can be navigated using the blue highlighted links found in the Contents section. Clicking on a highlighted title will take the reader to related text, clicking on a highlighted header above the text will return the reader to the Contents section.

Peter Plummer, Executive Director
State Office of Administrative Hearings and Rules

2007 PUBLICATION SCHEDULE

Issue No.	Closing Date for Filing or Submission Of Documents (5 p.m.)	Publication Date
1	January 15, 2007	February 1, 2007
2	February 1, 2007	February 15, 2007
3	February 15, 2007	March 1, 2007
4	March 1, 2007	March 15, 2007
5	March 15, 2007	April 1, 2007
6	April 1, 2007	April 15, 2007
7	April 15, 2007	May 1, 2007
8	May 1, 2007	May 15, 2007
9	May 15, 2007	June 1, 2007
10	June 1, 2007	June 15, 2007
11	June 15, 2007	July 1, 2007
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13	July 15, 2007	August 1, 2007
14	August 1, 2007	August 15, 2007
15	August 15, 2007	September 1, 2007
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23	December 15, 2007	January 1, 2008
24	January 1, 2008	January 15, 2008

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ADMINISTRATIVE RULES
FILED WITH THE SECRETARY OF STATE

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(f) Administrative rules filed with the secretary of state."

ADMINISTRATIVE RULES

SOAHR 2006-028

DEPARTMENT OF LABOR AND ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE SERVICES

INSURANCE POLICY FORMS – SHORTENED LIMITATION OF ACTION CLAUSES

Filed with the Secretary of State on May 3, 2007

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the commissioner of the Office of Financial and Insurance Services by section 210 of the insurance code of 1956, 1956 PA 218, 1969 PA 306, E.R.O. No 2000-2, and E.R.O. No 2003-1; MCL 500.210, MCL 24.231 to MCL 24.233, MCL 445.2003, and MCL 445.2011)

Draft January 25, 2007

R 500.2211 and R 500.2212 are added to the Michigan Administrative Code as follows:

R 500.2211 Definitions.

Rule 1. As used in these rules:

(a) "Commissioner" means the commissioner of the office of financial and insurance services.

(b) "Form" means a form identified in section 2236(1) of the insurance code of 1956, 1956 PA 218, MCL 500.2236(1).

(c) "Personal insurance" means all insurance policies underwritten and sold on an individual or group basis for personal, family, or household use.

(d) "Shortened limitation of action clause" is a provision in a form that shortens the period of time otherwise provided by statute within which a claimant may bring an action in law or equity against an insurer for claims arising under a personal insurance policy. It includes any clause, condition, or provision that reduces the period of time established by the insurance code of 1956, 1956 PA 218, MCL 500.100 to MCL 500.8302, by the revised judicature act of 1961, 1961 PA 236 , MCL 600.101 to MCL 600.9947; or by any other applicable statute.

(e) Terms defined in the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, have the same meanings when used in these rules.

R 500.2212 Shortened limitation of action clauses prohibited.

Rule 2. (1) A shortened limitation of action clause unreasonably reduces the risk purported to be assumed in the general coverage of the policy within the meaning of MCL 500.2236(5).

(2) On and after the first day of the first month following the effective date of these rules, an insurer shall not issue, advertise, or deliver to any person in this state a policy, contract, rider, indorsement, certificate, or similar contract document that contains a shortened limitation of action clause. This does

not apply to a contract document in use before that date, but does apply to any such document revised in any respect on or after that date.

(3) On and after the first day of the first month following the effective date of these rules, a shortened limitation of action clause issued or delivered to any person in this state in a policy, contract, rider, indorsement, certificate, or similar contract document is void and of no effect. This does not apply to contract documents in use before that date, but does apply to any such document revised in any respect on or after that date.

(4) Nothing in this rule limits the commissioner's authority under section 2236 of the act to disapprove or withdraw approval of any form that contains a shortened limitation of action clause.

(5) By the first day of the second month following the effective date of these rules, each insurer transacting insurance in this state shall submit to the commissioner a list of all forms in effect in Michigan that contain shortened limitation of action clauses and shall submit a certification that the list is complete and accurate. If an insurer has no such forms in effect, it shall submit a letter to the commissioner reporting and certifying that fact.

ADMINISTRATIVE RULES

SOAHR 2006-035

DEPARTMENT OF LABOR AND ECONOMIC GROWTH

LIQUOR CONTROL COMMISSION

BEER RULES

Filed with the Secretary of State on May 3, 2007

This rule becomes effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the liquor control commission by section 215(1) of 1998 PA 58, MCL 436.1215(1))

R 436.1629 of the Michigan Administrative Code is amended to read as follows:

R 436.1629 Barrel deposit and refund.

Rule 29. (1) A manufacturer, an outstate seller of beer, or a wholesaler of beer shall collect a barrel deposit of $30.00 for a barrel, 1/2 barrel, and 1/4 barrel of beer.

(2) A cash refund of $30.00 for a barrel, 1/2 barrel, and 1/4 barrel of beer shall be made to a licensee who has made the deposit and returned the barrels for refund.

ADMINISTRATIVE RULES

SOAHR 2006-041

DEPARTMENT OF AGRICULTURE

OFFICE OF RACING COMMISSIONER

GENERAL RULES

Filed with the Secretary of State on May 3, 2007

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the office of racing commissioner by section 7 of 1995 PA 279, MCL 431.307)

R 431.2090, R 431.2120, R 431.3075, R 431.3110, R 431.4001, and R 431.4180 of the Michigan Administrative Code are amended as follows:

R 431.2090 Trifecta.

Rule 2090. (1) The trifecta is a contract by the purchaser of a ticket to select the 3 horses that will finish first, second, and third in the race. The trifecta will be calculated as an entirely separate pool.

(2) Trifecta pool. The amount wagered on the winning combination, such being the horse finishing first, the horse finishing second, and the horse finishing third, in exact order, is deducted from the net pool to determine the profit. The profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning trifecta combination. Payoff includes the amount wagered and profit thereon. In addition, the following provisions apply to trifecta pools:

(a) If no ticket is sold designating, in order, the first 3 horses, the net pool shall be distributed equally among holders of tickets designating the first 2 horses in order.

(b) If no ticket is sold designating, in order, the first 2 horses, the net pool shall be distributed equally among holders of tickets designating the first horse to win.

(c) If no ticket is sold designating the first horse to win, the net pool shall be distributed equally among holders of tickets designating the second and third horses in order.

(d) If less than 3 horses finish, the payoff shall be made on tickets selecting the actual finishing horses in order, ignoring the balance of the selection.

(e) If there is a dead heat, all trifecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position involved in the dead heat, shall be winning tickets. The payoff will be calculated as a place pool.

(3) If a horse is scratched or declared a nonstarter, all trifecta tickets previously issued designating such horse shall be refunded and deducted from the gross pool.

R 431.2120 Superfecta.

Rule 2120. (1) The superfecta is a contract by the purchaser of a ticket to select, in order, the first, second, third, and fourth place horses in the designated superfecta race, as designated by the track licensee with the approval of the commissioner. Payment of winning tickets shall be made only to the holders of the tickets who have selected the same order of finish as officially posted, except if there is a scratch or as otherwise provided in these rules.

(2) Superfecta wagering has no connection with, or relation to, the win, place, and show betting pools and shall be calculated as an entirely separate pool. The ticket shall be labelled a superfecta ticket.

(3) If a horse is scratched or excused from racing, additional tickets shall not be sold designating such horse, and all tickets previously sold designating such horse shall be refunded and the money deducted from the gross pool.

(4) If no ticket is sold designating, in order, the first 4 horses, or if only 3 horses finish, the net pool shall be distributed equally among holders of tickets designating, in order, the first 3 horses. If no ticket is sold designating, in order, the first 3 horses, or if only 2 horses finish, the net pool shall be distributed equally among holders of tickets designating, in order, the first 2 horses. If no tickets are sold designating, in order, the first 2 horses, the net pool shall be distributed equally among holders of tickets designating the winner.

(5) If no ticket is sold designating the winner to win, the superfecta shall be declared off and the gross pool refunded.

(6) If there is a dead heat or dead heats, all tickets designating the correct order of finish, crediting each horse in a dead heat as finishing in either position involved in the dead heat, shall be winning tickets, and the aggregate number of winning tickets shall be divided into the net pool for the purpose of determining the payoff.

R 431.3110 Mutuel entries; common ties.

Rule 3110. (1) Not more than 2 horses that have common ties requiring a mutuel entry shall be entered in a race. A preference for 1 of the horses shall be made when making a double entry. Two horses that have common ties requiring a mutuel entry shall not start in a race to the exclusion of a single betting interest.

(2) In races with a purse value of $50,000 or more, horses with common ownership may race as separate betting interests. It shall be indicated prominently in the program if horses are trained or owned by the same person.

(3) A trainer of any horse shall not have any ownership interest in any other horse in the same race, unless such horses are coupled as a single wagering interest.

(4) Where no exception exists, all horses that have common ties through ownership or training may be coupled as an entry in a race when approved by the stewards. Either may be scratched up to 1 hour before post time for the first race.

R 431.3075 Workout clockers.

Rule 3075. (1) The racing commissioner and each association hosting a race meeting shall employ a separate experienced clocker. Each clocker shall make a record of all morning workouts or any morning trials on the main track or training track of the association. A combined record of all workouts and trials shall be presented to the racing secretary by the clockers and a copy shall be delivered to the stewards.

(2) Every occupational licensee who exercises a horse shall correctly identify to the clockers the horse he or she is exercising and shall state the distance over which the horse is to be worked and the point at which the workout is intended to begin.

(3) Horses working between races shall also be identified and their times announced. A horse shall not be permitted to work between races without the permission of the stewards and notification to necessary officials to ensure safety.

(4) A horse that has not started for 45 days is ineligible to race until it has completed 1 or more timed workouts satisfactory to the stewards before the day of the race in which the horse is entered. If such workouts do not appear in the daily racing form, they shall be published, where possible, in the track program the day of the race in which the horse is entered or shall be posted in 3 places in the racing plant for public inspection.

(5) The stewards may scratch a horse whose recent workouts have not been properly recorded with the stewards' office.

R 431.4001 Definitions; A to E.

Rule 4001. As used in this part:

(a) "Added money early closing event" means an event closing in the same year in which it is to be contested in which all entrance and declaration fees received are added to the purse.

(b) "Age" means the number of years since a horse was foaled. Age is determined as if such horse were foaled on January 1 of the year in which the horse was foaled, except that horses foaled in the months of November and December between November 1, 1970, and December 31, 1980, shall be reckoned from January 1 of the succeeding year.

(c) "Claiming race" means a race in which a horse may be claimed pursuant to the rules of the racing commissioner.

(d) "Classified race" means a race in which, regardless of the eligibility of horses, entries are selected on the basis of ability or performance.

(e) "Conditioned race" means an overnight event to which eligibility is determined according to specified qualifications. Such qualifications may be based upon the following:

(i) Money winnings in a specified number of previous races or during a specified period of time.

(ii) Finishing position in a specified number of previous races or during a specified period of time.

(iii) Age, sex, or number of starts during a specified period of time.

(iv) Special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada.

(v) Any combination of the qualifications listed in this subdivision.

(f) "Current charted line" means written documentation of a horse's performance recorded on the horse's eligibility certificate by a licensed charter or licensed clerk of the course, within 45 days of the date of the race for which the horse is entered. A current charted line shall include all of the following information:

(i) Date of race.

(ii) Location.

(iii) Track size, if other than 1/2 mile.

(iv) Track condition.

(v) Type of race.

(vi) Distance of race.

(vii) Fractional times of the leading horse, including race time.

(viii) Post position.

(ix) Position at first quarter.

(x) Position at half.

(xi) Position at three-quarters.

(xii) Position at head of stretch with lengths behind leader.

(xiii) Position at finish with lengths behind leader.

(xiv) Individual race time of horse.

(xv) Closing dollar odds.

(xvi) Name of driver.

(xvii) Dead heats.

The symbols for free-legged, breaks, and park outs shall be used where appropriate.

(g) "Dash" means a race decided in a single trial. Dashes may be given in a series of 2 or 3 governed by 1 entry fee for the series, in which event a horse shall start in all dashes. Positions may be drawn for each dash.

(h) "Declaration" means the naming of a particular horse to a particular race as a starter. Declarations shall be taken not more than 4 days in advance for all races, except those for which qualifying dashes are provided.

(i) "Early closing race" means a race for a definite purse to which entries close not less than 6 weeks preceding the race. The entrance fee may be on the installment plan or otherwise and all payments are forfeits. Payments on 2-year-olds in early closing events are not permissible before February fifteenth of the year in which the horse is a 2-year-old.

(j) "Elimination heats" means heats of a race split according to these rules which qualify the contestants for a final heat.

(k) "Entry" means either of the following:

(i) A horse entered in a race.

(ii) Two or more horses which are entered in a race and which are coupled as a mutuel entry or joined in the mutuel field pursuant to the rules of the racing commissioner.

(l) "Extended pari-mutuel meeting" means a meeting at which no agricultural fair is in progress with an annual total of more than 10 days' duration with pari-mutuel wagering.

R 431.4180 Mutuel entries; common ties.

Rule 4180. (1) Not more than 2 horses that have common ties so as to be joined as a mutuel entry shall be entered in an overnight race. A preference for 1 of the horses shall be made when making a double entry. Two horses that have common ties so as to be joined as a mutual entry shall not start in a race to the exclusion of a single interest.

(2) Horses which have common ties through training only, but which have separate and distinct ownership, may, in a stakes race, late or early closing race, futurity, free-for-all, or another special event, at the request of the association, be permitted by the stewards to be entered and run as separate betting interests. In races with a purse value of $50,000 or more, horses with common ownership may race as separate betting interests. Horses that are trained by the same person shall be indicated prominently in the program.

(3) A trainer of any horse shall not have an ownership or other interest in any other horse in the same race, unless such horses are coupled as a single betting interest.

(4) Where no exception exists, all horses having common ties through ownership or training may be coupled and run as an entry in a race when approved by the stewards.

(5) If the race is split into 2 or more divisions, horses in an entry shall be seeded, insofar as possible, first by owners, then by trainers, and then by stables, but the divisions in which they compete and their post positions shall be drawn by lot. This subrule shall also apply to elimination heats.

(6) In addition to the provisions of subrules (1) to (5) of this rule, horses separately owned or trained may be coupled as an entry when approved by the stewards where it is necessary to do so to protect the public interest for the purpose of pari-mutuel wagering only. However, where this is done, entries shall not be rejected.

PROPOSED ADMINISTRATIVE RULES, NOTICES OF PUBLIC HEARINGS

MCL 24.242(3) states in part:

"... the agency shall submit a copy of the notice of public hearing to the State Office of Administrative Hearings and Rules for publication in the Michigan register. An agency's notice shall be published in the Michigan register before the public hearing and the agency shall file a copy of the notice of public hearing with the State Office of Administrative Hearings and Rules."

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(d) Proposed administrative rules.

(e) Notices of public hearings on proposed administrative rules."

PROPOSED ADMINISTRATIVE RULES

SOAHR 2005-039

DEPARTMENT OF COMMUNITY HEALTH

HEALTH PROGRAMS ADMINISTRATION - BUREAU OF CHILDREN AND FAMILY PROGRAMS

DETERMINATION OF DEATHS OF CHILDREN

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

Draft October 24, 2005

(By authority conferred on the director of the Michigan Department of Community Health by section 52.205a of 2004 PA 179, section 8 of 1978 PA 312, sections 2226 and 5111 of 1978 PA 368, and Executive Reorganization Order Nos. 1996-1 and 1997-4, MCL 52.205a, 325.78, 333.2226(d), 333.5111, 330.3101, and 333.26324)

R 330.1, R 330.2, R 330.3, and R 330.4 are added to the Michigan Administrative Code as follows:

R 330.1 Definitions.

Rule 1. (1) As used in these rules:

(a)"County medical examiner" means the physician appointed by the board of commissioners in a county, responsible for investigating the cause and manner of deaths of individuals, in accordance with MCL 52.201 and 52.202.

(b) "Deputy county medical examiner" means the physician appointed by the board of commissioners in a county, and approved by the County Medical Examiner, responsible for investigating the cause and manner of deaths of individuals, in accordance with MCL 52.201 and 52.202.

(c) "Investigation of a death" means any of the following: gross external examination of the body, autopsy, toxicology, review of medical history, review of incident scene information, interviews with survivors and witnesses.

(d) "Manner" means how the cause of death arose and is classified on the death certificate. Natural deaths are caused exclusively by disease. If an injury, such as mechanical, chemical, electrical causes or contributes to death, then the death is classified on the death certificate as non-natural and is subclassified as accident, homicide, suicide or not determinable.

(e) "Cause of Death" means the actual disease, injury or complications that directly resulted in the death of an individual.

(f) "State of Michigan protocols to determine cause and manner of sudden and unexplained child deaths" means the state of Michigan's standard of investigation for determination of cause and manner of deaths of children under age two, when circumstances are sudden and unexplained. The protocol

includes three components: the *Incident Death Scene Investigation Guidelines*, the *Child Autopsy Checklist*, and the *Child's Medical History Case Review.*

(g) "Incident death scene" means the location where the child was first found unresponsive, not breathing, or obviously dead.

(h) "SIDS" or "sudden infant death syndrome" means a cause of death defined as the sudden death of an infant under 1 year of age which remains unexplained after a thorough case investigation, including performance of a complete autopsy, examination of the death scene, and review of the clinical history.

R 330.2 Child death scene investigation protocol.

Rule 2. Before making a cause and manner determination on the death certificate of deaths of children under age 2, when the circumstances in these deaths are sudden and unexplained, the county medical examiner or deputy county medical examiner shall ensure that an incident death scene investigation, autopsy, and the medical history case review are completed, in accordance with the "2006 State of Michigan Protocols to Determine Cause and Manner of Sudden and Unexplained Child Deaths," which can be obtained at no cost from the Michigan Department of Community Health, Division of Family and Community Health, 109 West Michigan Avenue, Lansing, Michigan, 48913, or from the Michigan Public Health Institute, Child and Adolescent Health Program, at 2438 Woodlake Circle, Suite 240, Okemos, Michigan, 48864. These protocols may also be obtained on the internet at www.keepingkidsalive.org.

R 330.3 Approval of alternate protocol.

Rule 3. A county medical examiner or deputy county medical examiner may utilize an alternate protocol for all cases within a county to determine cause and manner of sudden and unexplained deaths of children under age 2. An alternate protocol used by a county jurisdiction shall be approved by the department of community health before utilization.

R 330.4 SIDS as cause of death.

Rule 4. A county medical examiner or deputy county medical examiner shall not declare cause of death as SIDS (Sudden Infant Death Syndrome) unless an autopsy, incident death scene investigation, and review of child's medical history are completed.

NOTICE OF PUBLIC HEARING

SOAHR 2005-039
NOTICE OF PUBLIC HEARING
Determination of Deaths of Children

The Department of Community Health will hold a public hearing on Monday, June 18, 2007, at 10:30 a.m. at the Department of Community Health, 201 Townsend, 1st Floor, Conference Center Rooms B & C, Lansing, Michigan.

The public hearing is being held to receive comments from interested persons on a new administrative rule regarding the determination of deaths of children. The proposed rule requires county medical examiners and deputy counsel medical examiners to determine the cause of child death of children under two years of age in accordance with the *State of Michigan Protocols to Determine Cause and Manner of Sudden and Unexplained Child Deaths*. PA 179 of 2004 amends Section 5a of that act to empower deputy county medical examiners with the same powers as county medical examiners in regard to autopsies in cases of sudden infant death and other instances where a child under two years of age is found dead without a known cause, and requires the Department of Community Health to promulgate rules to promote consistency and accuracy among county and deputy county medical examiners in determining the cause of death in these instances.

These rules are being promulgated under the authority conferred on the department of community health by sections 52.205a of 2004 PA 179, section 8 of 1978 PA 312, sections 2226 and 5111 of 1978 PA 368, and Executive Reorganization Order Nos. 1996-1 and 1997-4, MCL 52.205a, 325.78, 333.2226(d), 333.5111, 330.3101, and 333.26324. These rules are proposed to take immediate effect upon filing with the Secretary of State.

Hearing comments may be presented in person, with written comments available at the time of presentation. Written comments also will be accepted at the following address or E-mail address until close of business Monday, June 18, 2007. Address communications to:

Department of Community Health
Office of Legal Affairs
201 Townsend
Lansing, MI 48913
Attention: Mary Greco, Legal Affairs Coordinator
E-mail address: grecom@michigan.gov
A copy of the proposed rules may be obtained by contacting the address noted above.

All hearings are conducted in compliance with the 1990 Americans with Disabilities Act. Hearings are held in buildings that accommodate mobility-impaired individuals and accessible parking is available. A disabled individual who requires accommodations for effective participation in a hearing should call Nita Hixson at (517) 335-1341 to make the necessary arrangements. To ensure availability of the accommodation, please call at least 1 week in advance.
Date: 05/04/2007 SOAHR # 2005-039-CH

PROPOSED ADMINISTRATIVE RULES

SOAHR 2006-080

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH

BUREAU OF MENTAL HEALTH & SUBSTANCE ABUSE SERVICES

RIGHTS OF RECIPIENTS

Filed with the Secretary of State on

These rules take effect immediately after filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the department of community health by sections 1 to 4 of 1905 PA 80, section 33 of 1969 PA 306, and sections 114, 130, 136, 157, 206, 244, 498n, 498r, 842, 844, 908, and 1002a of 1974 PA 258, being MCL 19.141 to MCL 19.144, MCL 24.233, MCL 330.1114, MCL 330.1130, MCL 330.1136, MCL 330.1206, MCL 330.1244, MCL 330.1498n, MCL 330.1498r, MCL 330.1842, MCL 330.1844, MCL 330.1908, and MCL 330.2002a)

Draft April 4, 2007

R 330.7001, R 330.7009, R 330.7011, R 330.7046, R 330.7158, R 330.7199, and R 330.7243 of the Michigan Administrative Code are amended as follows:

PART 7. RIGHTS OF RECIPIENTS

SUBPART 1. GENERAL PROVISIONS

R 330.7001 Definitions.

Rule 7001. As used in this part:

(a) "Abuse class I" means a nonaccidental act or provocation of another to act by an employee, volunteer, or agent of a provider that caused or contributed to the death, or sexual abuse of, or serious physical harm to a recipient.

(b) "Abuse class II" means any of the following:

(i) A nonaccidental act or provocation of another to act by an employee, volunteer, or agent of a provider that caused or contributed to nonserious physical harm to a recipient.

(ii) The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm.

(iii) Any action or provocation of another to act by an employee, volunteer, or agent of a provider that causes or contributes to emotional harm to a recipient.

(iv) An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, despite the fact that a guardian has not been appointed, that results in substantial economic, material, or emotional harm to the recipient.

(v) Exploitation of a recipient by an employee, volunteer, or agent of a provider.

(c) "Abuse class III" ~~means the use of language or other means of communication by an employee, volunteer, or agent of a provider to degrade, threaten, or sexually harass a recipient.~~**means verbal abuse as defined in paragraph (w) of this subdivision.**

(d) "Act" means mental health code, 1974 PA 258, MCL 330.

~~(d)~~ **(e)** "Anatomical support" means body positioning or a physical support ordered by a ~~physical or occupational therapist~~ **physician** for the purpose of maintaining or improving a recipient's physical functioning. ~~All other applications of appliances that restrict a resident~~'s movement, regardless of their stated purpose, shall be considered physical restraint.~~

~~(e)~~ **(f)** "Bodily function" means the usual action of any region or organ of the body.

~~(f)~~ **(g)** "Emotional harm" means impaired psychological functioning, growth, or development of a significant nature as evidenced by observable physical symptomatology and as determined by a mental health professional.

(h) "Exploitation" means an action that involves the misappropriation or misuse of a recipient's property or funds.

(i) "Force" means non-accidental physical contact with or physical strength exerted against the body of a recipient by an employee, volunteer, or agent of a provider that is not an approved physical management technique and that is not used to prevent the recipient from harming himself, herself, or others or from causing substantial property damage.

~~(g)~~**(j)** "Neglect class I" means either of the following:

(i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law and/or rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to serious physical harm to **or sexual abuse** of a recipient.

(ii) The failure to report **apparent or suspected** abuse **Class I** or neglect Class I of a recipient. ~~when the abuse or neglect results in the death of, or serious physical harm, to the recipient.~~

~~(h)~~**(k)** "Neglect class II" means either of the following:

(i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to nonserious physical harm or emotional harm to a recipient.

(ii) The failure to report **apparent or suspected** abuse **Class II** or neglect **Class II** of a recipient. ~~when the abuse or neglect results in nonserious harm to the recipient.~~

~~(i)~~ **(l)**"Neglect class III" means either of the following:

(i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law and/or rules, policies, guidelines, written directives, procedures, or individual plan of service that either placed or could have placed a recipient at risk of physical harm **or sexual abuse.**

(ii) The failure to report **apparent or suspected** abuse **Class III** or neglect **Class III** of a recipient. ~~when the abuseor neglect places a recipient at risk of serious or nonserious harm.~~

~~(j)~~ **(m)**"Nonserious physical harm" means physical damage **or what could reasonably be construed as pain** suffered by a recipient that a physician or registered nurse determines could not have caused, or contributed to, the death of a recipient, the permanent disfigurement of a recipient, or an impairment of his or her bodily functions.

~~(k)~~ **(n)**"Physical management" means a technique used by staff to restrict the movement of a recipient by direct physical contact in order to prevent the recipient from harming himself, herself, or others or from causing substantial property damage.

~~(l)~~ **(o)**"Provider" means the department, each community mental health services program, each licensed hospital, each psychiatric unit, and each psychiatric partial hospitalization program licensed under section 137 of the act, their employees, volunteers, and contractual agents.

~~(m)~~ **(p)**"Psychotropic drug" means any medication administered for the treatment or amelioration of disorders of thought, mood, or behavior.

~~(n)~~ **(q)**"Serious physical harm" means physical damage suffered by a recipient that a physician or registered nurse determines caused or could have caused the death of a recipient, caused the impairment of his or her bodily functions, or caused the permanent disfigurement of a recipient.

~~(o)~~ **(r)**"Sexual abuse" means ~~any sexual contact or sexual penetration, as defined in section 520a(k) and (l) of Act No. 328 of the Public Acts of 1931, as amended, being "750.520a(k) and (l) of the Michigan Compiled Laws,~~ **criminal sexual conduct as defined by section 520b to 520e of 1931 PA 318, being MCL 750.520b to MCL 750.520e** involving an employee, volunteer, or agent of a provider and a recipient **or any sexual contact involving an employee, volunteer, or agent of a department operated hospital or center, a facility licensed by the department under section 137 of the act or an adult foster care facility and a recipient.**

~~(p)~~ **(s)**"Sexual harassment" means sexual advances to a recipient, requests for sexual favors from a recipient, or other conduct or communication of a sexual nature toward a recipient as defined in title VII of the civil rights act of 1991.

~~(q)~~ **(t)**"Time out" means a voluntary response to the therapeutic suggestion to a recipient to remove himself or herself from a stressful situation in order to prevent a potentially hazardous outcome.

~~(r)~~ **(u)**"Treatment by spiritual means" means a spiritual discipline or school of thought that a recipient wishes to rely on to aid physical or mental recovery.

~~(s)~~ **(v)**"Unreasonable force" means physical management or force that is applied by an employee, volunteer, or agent of a provider to a recipient where there is no ~~immediate risk of physical harm to staff or other recipients and no immediate risk of significant property damage~~ **imminent risk of significant injury to the recipient, staff or others** ~~and~~ **or** that is any of the following:

(i) Not in compliance with approved behavior management techniques.

(ii) Not in compliance with the recipient's individual ~~treatment plan.~~ **plan of service**,

(iii**)** Used when other less restrictive measures were not attempted immediately before the use of physical management or force.

(w) "Verbal abuse" means the use of language or other means of communication by an employee, volunteer, or agent of a provider to degrade, threaten or sexually harass a recipient.

R 330.7009 Civil rights.

Rule 7009. (1) A provider shall establish measures to prevent and correct a possible violation of civil rights related to the service provision. A violation of civil rights shall be regarded as a violation of recipient rights and shall be subject to remedies established for recipient rights violations.

(2) A recipient shall be permitted, to the maximum extent feasible and in any legal manner, to conduct personal and business affairs and otherwise exercise all rights, benefits, and privileges not divested or limited.

(3) An adult recipient, and a minor when state law allows consent by a minor, shall be presumed legally competent. The presumption may be rebutted only by court appointment of a guardian or exercise by a court of guardianship powers and only to the extent of the scope and duration of that guardianship. A provider shall do all of the following:

(a) Presume the recipient is legally competent if he or she does not have a guardian. A provider shall also presume a recipient with a limited guardian is legally competent in all areas which are not specifically identified as being under the control or scope of the guardian.

(b) Not institute guardianship proceedings, unless there is sufficient reason to doubt the recipient's comprehension, as provided under these rules and the policies and procedures of the provider.

(c) When a recipient's comprehension is in doubt, justification for petitioning the probate court for guardianship consideration shall be entered in the recipient's clinical record.

(d) Not petition for, or otherwise cause the filing of, a petition for guardianship of greater scope than is essential.

(e) Petition or cause a petition to be filed with the court to terminate a recipient's guardian or narrow the scope of the guardian's powers when the recipient demonstrates he or she is capable of providing informed consent.

(4) A provider shall not interfere with the right of a recipient to enter into a marriage contract or obtain or oppose a divorce.

(5) The right of a recipient to participate in the electoral process, including primaries and special and recall elections shall not be abridged. An eligible recipient, including a recipient determined to be legally incompetent, shall have the right to exercise his or her franchise, except those the legislature may exclude from the electoral process by defining mental incompetence in any statute implementing article 2, section 2 of the state constitution of 1963. Facilities shall have procedures which assure all the following:

(a) All ~~residents~~ **recipients** 18 years of age or over are canvassed to ascertain their interest in registering to vote, obtaining absentee ballots, and casting ballots. The canvass shall be conducted to allow sufficient time for voter registration and acquisition of absentee ballot, or provided ~~residents~~ **recipients** with an opportunity to leave the premises to exercise voting privileges, or to register to vote, or a facility director may require supervisory personnel to accompany ~~residents~~ **recipients** and may require ~~residents~~ **recipients** to bear reasonable transportation costs.

(b) Arrangements with state and local election officials are made to provide voter registration and casting of ballots for interested ~~residents~~ **recipients** at the facility or may elect to encourage the use of absentee ballots.

(c) Facilities shall assist election officials in determining a ~~resident's~~ **recipient's** place of residence for voting purposes.

(d) Facilities shall not prohibit a ~~resident~~ **recipient** from receiving campaign literature, shall permit campaigning by candidates, and may reasonably regulate the time, duration, and location of these activities. A facility director shall permit a ~~resident~~ **recipient** to place political advertisements in his or her personal quarters.

(6) A recipient shall be permitted access to religious services and worship on a nondiscriminatory basis. A recipient shall not be coerced into engaging in religious activity.

(7) A recipient's property or living area shall not be searched by a provider unless such a search is authorized in the ~~resident's~~ **recipient's** plan of service or there is reasonable cause to believe that the ~~resident~~ **recipient** is in possession of contraband or property that is excluded from the ~~resident's~~ **recipient's** possession by the written policies, procedures, or rules of the provider. The following conditions apply to all searches:

(a) A search of the ~~resident's~~ **recipient's** living area or property shall occur in the presence of a witness. The ~~resident~~ **recipient** shall also be present unless he or she declines to be present.

(b) The circumstances surrounding the search shall be entered in the ~~resident's~~ **recipient's** record, and shall include all the following:

(i) The reason for initiating the search.

(ii) The names of the individuals performing and witnessing the search.
(iii) The results of the search, including a description of the property seized.
(8) The requirement for reasonable cause to believe that the recipient is in possession of contraband or excluded property shall not apply to recipients committed to the Center for Forensic Psychiatry under section 1001a(1) of the act.

R 330.7011 Notification of rights.
Rule 7011. At the time services are first requested, a provider shall inform a recipient, his or her guardian, ~~or other legal representative~~ **or the parent with legal custody of a minor recipient** of ~~their~~ **the recipient's** lawful rights in an understandable manner. If a recipient is unable to read or understand the materials provided, a provider shall make a reasonable attempt to assist the recipient in understanding the materials. A note describing the explanation of the materials and who provided the explanation shall be entered in the recipient's record.

R 330.7046 Summary reports of extraordinary incidents.
Rule 7046. In addition to other information required to be contained in the clinical record of the recipient by statute and rule, the record shall contain a summary of any extraordinary incidents involving the recipient. The report is to be entered into the record by a staff member who has personal knowledge of the extraordinary incident. **An incident or peer review report generated pursuant to MCL 330.1143a does not constitute a summary report as intended by this section and shall not be maintained in the clinical record of a recipient.**

R 330.7158 Medication.
Rule 7158. (1) A provider shall only administer medication at the order of a physician and in compliance with the provisions of section 719 of the act, if applicable.
(2) A provider shall assure that medication use conforms to federal standards and the standards of the medical community.
(3) A provider shall not use medication as punishment, for the convenience of the staff, or as a substitute for other appropriate treatment.
(4) A provider shall review the administration of a psychotropic medication periodically as set forth in the recipient's individual plan of service and based upon the recipient's clinical status.
(5) If an individual cannot administer his or her own medication, a provider shall ensure that medication is administered by or under the supervision of personnel who are qualified and trained. ~~pursuant to Act No. 368 of the Public Acts of 1978, as amended, being "333.1101 et seq. of the Michigan Compiled Laws. **1978 PA 368, MCL 333.1101**.~~
(6) A provider shall record the administration of all medication in the recipient's clinical record.
(7) A provider shall ensure that medication errors and adverse drug reactions are immediately and properly reported to a physician and recorded in the recipient's clinical record.
(8) A provider shall ensure that the use of psychotropic medications is subject to the following restrictions:
(a) ~~A provider shall not administer prescribed psychotropic medications to a recipient unless the recipient consents or unless administration of chemotherapy is necessary to prevent physical harm or injury to the recipient or others~~. **Unless the individual consents or unless administration of chemotherapy is necessary to prevent physical injury to the individual or to others,** ~~(b)~~ psychotropic medications shall not be administered to any of the following persons:
(i) A ~~resident~~ **recipient** who has been admitted by medical certification or by petition until after a final adjudication as required under section 468(2) of the act.

(ii) A defendant undergoing examination at the center for forensic psychiatry or other certified facility to determine competency to stand trial.

(iii) A person acquitted of a criminal charge by reason of insanity while undergoing examination and evaluation at the center for forensic psychiatry.

~~(c)~~**(c)** (b)A provider may administer chemotherapy to prevent physical harm or injury after signed documentation of the physician is placed in the ~~resident's~~ **recipient's** clinical record and when the actions of a ~~resident~~ **recipient** or other objective criteria clearly demonstrate to a physician that the ~~resident~~ **recipient** poses a risk of harm to himself, herself, or others.

~~(d)~~**(c)** Initial administration of psychotropic chemotherapy may not be extended beyond 48 hours unless there is consent. The duration of psychotropic chemotherapy shall be as short as possible and at the lowest possible dosage that is therapeutically effective. The chemotherapy shall be terminated as soon as there is little likelihood that the ~~resident~~ **recipient** will pose a risk of harm to himself, herself, or others.

~~(e)~~**(d)**Additional courses of chemotherapy may be prescribed and administered if a ~~resident~~ **recipient** decompensates and again poses a risk to himself, herself, or others.

(9) A provider shall ensure that only medication that is authorized in writing by a physician is given to ~~residents~~ **recipients** upon his or her leave or discharge from the providers program and that enough medication is made available to ensure the recipient has an adequate supply until he or she can become established with another provider.

R 330.7199 Written plan of services.

Rule 7199. (1) The individualized written plan of services is the fundamental document in the recipient's record. A provider shall retain all periodic reviews, modifications, and revisions of the plan in the recipient's record.

(2) The plan shall identify, at a minimum, all of the following:

(a) All individuals, including family members, friends, and professionals that the individual desires or requires to be part of the planning process.

(b) The services, supports, and treatments that the recipient requested of the provider.

(c) The services, supports, and treatments committed by the responsible mental health agency to honor the recipient's request specified in subdivision (b) of this subrule.

(d) The person or persons who will assume responsibility for assuring that the committed services and supports are delivered.

(e) When the recipient can reasonably expect each of the committed services and supports to commence, and, in the case of recurring services or supports, how frequently, for what duration, and over what period of time.

(f) How the committed mental health services and supports will be coordinated with the recipient's natural support systems and the services and supports provided by other public and private organizations.

(g) Any restrictions or limitations of the recipient's rights. **Such restrictions, limitations, or any aversive or intrusive behavior treatment techniques shall be reviewed and approved by a formally constituted committee of mental health professionals with specific knowledge, training, and expertise in applied behavioral analysis. Any restriction or limitation shall be justified, time-limited, and clearly documented in the plan of service.** Documentation shall be included that describes attempts that have been made to avoid such restrictions as well as what actions will be taken as part of the plan to ameliorate or eliminate the need for the restrictions in the future.

(h) Strategies for assuring that recipients have access to needed and available supports identified through a review of their needs. Areas of possible need may include any of the following:

(i) Food.
(ii) Shelter.
(iii) Clothing.
(iv) Physical health care.
(v) Employment.
(vi) Education.
(vii) Legal services.
(viii) Transportation.
(ix) Recreation.
(i) A description of any involuntary procedures and the legal basis for performing them.
(j) A specific date or dates when the overall plan, and any of its subcomponents will be formally reviewed for possible modification or revision.

(3) The plan shall not contain privileged information or communications.

(4) Except as otherwise noted in subrule (5) of this rule, the individual plan of service shall be formally agreed to in whole or in part by the responsible mental health agency and the recipient, his or her guardian, if any, or the parent who has legal custody of a minor recipient. If the appropriate signatures are unobtainable, then the responsible mental health agency shall document witnessing verbal agreement to the plan. Copies of the plan shall be provided to the recipient, his or her guardian, if any, or the parent who has legal custody of a minor recipient.

(5) Implementation of a plan without agreement of the recipient, his or her guardian, if any, or parent who has legal custody of a minor recipient may only occur when a recipient has been adjudicated pursuant to the provisions of section ~~469, 472,~~ **469a, 472a,** 473, 515, 518, or 519 of the act. However, if the proposed plan in whole or in part is implemented without the concurrence of the adjudicated recipient or his or her guardian, if any, **or the parent who has legal custody of a minor recipient**, then the stated objections of the recipient or his or her guardian **or the parent who has legal custody of a minor recipient** shall be included in the plan.

R 330.7243 Restraint and seclusion.

Rule 7243. (1) A provider shall keep a separate, permanent chronological record specifically identifying all instances when physical restraint or seclusion has been used. The record shall include all of the following information:

(a) The name of the ~~resident~~ **recipient.**
(b) The type of physical restraint or conditions of seclusion.
(c) The name of the authorizing and ordering physician.
(d) The date and time placed in temporary, authorized, and ordered physical restraint or seclusion.
(e) The date and time the ~~resident~~ **recipient** was removed from temporary, authorized, and ordered physical restraint or seclusion.

(2) A ~~resident~~ **recipient** who is in restraint or seclusion shall be inspected at least once every 15 minutes by designated personnel.

(3) A provider shall ensure that documentation of staff monitoring and observation is entered into the medical record of the ~~resident~~ **recipient**.

(4) A ~~resident~~ **recipient** in physical restraint or seclusion shall be provided hourly access to a toilet.

(5) A ~~resident~~ **recipient** in physical restraint or seclusion shall have an opportunity to bathe, or shall be bathed as often as needed, but at least once every 24 hours.

(6) If an order for restraint or seclusion is to expire and the continued use of restraint or seclusion is clinically indicated and must be extended, then a physician's reauthorization or reordering of restraint or seclusion shall be in compliance with both of the following provisions:

(a) If the physical restraint device is a cloth vest and is used to limit the resident's movement at night to prevent the ~~resident~~ **recipient** from injuring himself or herself in bed, the physician may reauthorize or reorder the continued use of the cloth vest device pursuant to the provisions of section 740(4) and(5) of the act.

(b) Except as specified in subdivision (a) of this subrule, a physician who orders or reorders restraint or seclusion shall do so in accordance with the provisions of sections 740(5) and 742(5) of the act. The required examination by a physician shall be conducted not more than 30 minutes before the expiration of the expiring order for restraint or seclusion.

(7) If a ~~resident~~ **recipient** is removed from restraint or seclusion for more than 30 minutes, then the order or authorization shall terminate.

(8) A provider shall ensure that a secluded or restrained ~~resident~~ **recipient** is given an explanation of why he or she is being secluded or restrained and what he or she needs to do to have the restraint or seclusion order removed. The explanation shall be provided in clear behavioral terms and documented in the record.

(9) For restrained ~~resident~~ **recipients**, a provider shall ensure that an assessment of the circulation status of restrained limbs is conducted and documented at 15-minute intervals or more often if medically indicated.

(10) For purposes of this rule, a time out intervention program**,** as defined in R 30.7001, is not a form of seclusion.

NOTICE OF PUBLIC HEARING

SOAHR 2006-080

NOTICE OF PUBLIC HEARING
RIGHTS OF RECIPIENTS

The Department of Community Health will hold a public hearing on Monday, June 18, 2007, at 9:00 a.m. at the Department of Community Health, 201 Townsend, 1st Floor, Conference Center Rooms B & C, Lansing, Michigan.

The public hearing is being held to receive comments from interested persons on proposed changes to the rights of recipient rules. The proposed changes will clarify existing rules, will expand the definition of abuse to bring it into compliance with other statutory definitions; will define sexual abuse as any conduct of an employee toward a consumer that meets the definition of Criminal Sexual Conduct under the Penal Code thus bringing it into the reality of de-institutionalization and community inclusion; will include in the definitions of neglect, the failure to report apparent or suspected abuse or neglect; will statutorily require the establishment of a specially constituted behavior treatment committee to review limitations and any aversive or intrusive behavior treatment techniques; will provide an exception to the reasonable cause requirement for property searches at the Center for Forensic Psychiatry.

These rules are being promulgated under the authority conferred on the department of community health by sections 1 to 4 of 1905 PA 80, section 33 of 1969 PA 306, and sections 114, 130, 136, 157, 206, 244, 498n, 498r, 842, 844, 908, and 1002a of 1974 PA 258, being MCL 19.141 to MCL 19.144, MCL 24.233, MCL 330.1114, MCL 330.1130, MCL 330.1136, MCL 330.1206, MCL 330.1244, MCL 330.1498n, MCL 330.1498r, MCL 330.1842, MCL 330.1844, MCL 330.1908, and MCL 330.2002a. These rules are proposed to take effect immediately upon filing with the Secretary of State.

Hearing comments may be presented in person, with written comments available at the time of presentation. Written comments also will be accepted at the following address or E-mail address until close of business June 18, 2007. Address communications to:

Department of Community Health
Office of Legal Affairs
201 Townsend
Lansing, MI 48913
Attention: Mary Greco, Legal Affairs Coordinator
E-mail address: grecom@michigan.gov
A copy of the proposed rules may be obtained by contacting the address noted above.

All hearings are conducted in compliance with the 1990 Americans with Disabilities Act. Hearings are held in buildings that accommodate mobility-impaired individuals and accessible parking is available. A disabled individual who requires accommodations for effective participation in a hearing should call Nita Hixson at (517) 335-1341 to make the necessary arrangements. To ensure availability of the accommodation, please call at least 1 week in advance.
Date: 05/04/2007 2006-080-CH

PROPOSED ADMINISTRATIVE RULES

SOAHR 2007-011

DEPARTMENT OF STATE POLICE

TRAFFIC SAFETY DIVISION

TESTS FOR BREATH ALCOHOL

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State

Draft May 3, 2007

(By authority conferred on the department of state police by 1945 PA 327, MCL 259.190, 1949 PA 300, MCL 257.625h, and 1994 PA 451, MCL 324.80181 and MCL 324.82137)

R 325.2653 of the Michigan Administrative Code is amended to read as follows:

R 325.2653 Equipment accuracy.

Rule 3. (1) An evidential breath alcohol test instrument shall be verified for accuracy at least once at any time during each calendar week, or more frequently as the department may require, by an appropriate class operator pursuant to R 325.2658(4). The tests need not be performed within 7 days of each other, but shall be performed less than 14 days apart. The test for accuracy shall be made in a prescribed manner using an alcohol standard that is approved by the department. For the instrument to meet the requirements for accuracy, a test result of .076 to .084 shall be obtained when using a controlled device that delivers an alcohol vapor concentration of .080 grams of alcohol per 210 liters of vapor~~. Other vapor concentrations shall show proportionally accurate results~~. **Controlled devices include both of the following:**

(a) Wet bath device that delivers an alcohol vapor concentration of .080 grams of alcohol per 210 liters of vapor.

(b) Compressed alcohol gas device that delivers .080 grams of alcohol per 210 liters of vapor or a result that is within 5% of the compressed alcohol standard concentration after applying applicable altitude or topographic elevation correction factor supplied by the manufacturer.

(2) A preliminary breath alcohol test instrument shall be verified for accuracy at least monthly, or more frequently as the department may require, by an appropriate class operator pursuant to R 325.2658(4). The test for accuracy shall be made in a prescribed manner using an alcohol standard that is approved by the department. For the instrument to meet the requirements for accuracy, a test result of .076 to .084 shall be obtained when using a controlled device that delivers an alcohol vapor concentration of .080 grams of alcohol per 210 liters of vapor. **Controlled devices include both of the following:**

(a) Wet bath device that delivers an alcohol vapor concentration of .080 grams of alcohol per 210 liters of vapor.

. (b) Compressed alcohol gas device that delivers .080 grams of alcohol per 210 liters of vapor or a result that is within 5% of the compressed alcohol standard concentration after applying applicable altitude or topographic elevation correction factor supplied by the manufacturer.

(3) Approved evidential breath alcohol test instruments shall be inspected, verified for accuracy, and certified as to their proper working order by either an appropriate class operator pursuant to R 325.2658(4) or the instrument manufacturer's authorized representatives approved by the department within 120 days of the previous inspection.

NOTICE OF PUBLIC HEARING

SOAHR Rule Set 2007-011 SP
DEPARTMENT OF STATE POLICE
TRAFFIC SAFETY DIVISION
TESTS FOR BREATH ALCOHOL
NOTICE OF PUBLIC HEARING
June 4, 2007
Michigan State Police Headquarters
714 South Harrison Road
East Lansing, Michigan
Alcohol Enforcement Building – 9:00 a.m. – 10:00 a.m.

The Department of State Police, Traffic Safety Division, will hold a public hearing on Monday, June 4, 2007, at the Michigan State Police Headquarters, 714 South Harrison Road, East Lansing, Michigan in the Alcohol Enforcement Building from 9:00 a.m. to 10:00 a.m. The hearing will be held to receive public comments on proposed rules for tests for breath alcohol.

The proposed rules are changes to existing rules, drafted to clarify terms defined in the rules and to incorporate the use of federally approved technology.

These rules are promulgated by authority conferred on the Department of State Police by 1945 PA 327, MCL 259.190; 1949 PA 300, MCL 258625h; and 1994 PA 451, MCL 324.80181 & MCL 324.82137. These rules will take effect immediately upon filing with the Secretary of State.

The rules [Rule Set 2007-011 SP] are published on the Michigan Government website at http://www.michigan.gov/orr and in the June 1, 2007 issue of the *Michigan Register*. Comments may be submitted to the address below at any time before 5:00 p.m. on June 4, 2007. Copies of the draft rules may also be obtained by mail or electronic transmission at the following address:

Department of State Police
Traffic Safety Division
714 South Harrison Road
East Lansing, Michigan 48823

For more information contact Sgt. Lance Cook at (517) 336-6660, E-mail: cooklr@michigan.gov.

The hearing site is accessible, including handicapped parking. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. People with disabilities requiring additional accommodations, such as information in alternative formats, in order to participate in the hearing should contact Sgt. Lance Cook at least 10 working days before the hearing.

PROPOSED ADMINISTRATIVE RULES

SOAHR 2007-015

DEPARTMENT OF EDUCATION

SUPERINTENDENT OF PUBLIC INSTRUCTION

SPECIAL EDUCATION PROGRAMS AND SERVICES

These rules take effect immediately upon filing with the Secretary of State unless adopted under section 33, 34, 45a(6), or 48 of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

Draft May 14, 2007

(By the authority conferred on the superintendent of public instruction by sections 1701 and 1703 of 1976 PA 451, MCL 380.1701 and MCL 380.1703, and Executive Reorganization Order Nos. 1996-6 and 1996-7, MCL 388.993 and MCL 388.994)

R 340.1701, R 340.1701a, R 340.1701b, R 340.1701c, R 340.1713, R 340.1721e, R 340.1722a, R 340.1722e, R 340.1723c, R 340.1724, R 340.1724d, R 340.1724f, R 340.1724h, R 340.1724i, R 340.1738, R 340.1748, R 340.1771, R 340.1772, R 340.1790, R 340.1810, R 340.1832, R 340.1837, and R 340.1861 of the Michigan Administrative Code are amended; and R 340.1724a, R 340.1724c, R 340.1724e, and R 340.1724g are rescinded from the Code as follows.

R 340.1701 Assurance of compliance.

Rule 1. All public agencies in the state, as those agencies are defined at 34 C.F.R. §300.~~22~~ **33** of the regulations implementing the individuals with disabilities education act, 20 U.S.C. chapter 33, §1400 et seq., shall comply with these rules; all provisions of the state's application for federal funds under part B **and part C** of the individuals with disabilities education act, 20 U.S.C. chapter 33, §1400 et seq.; the requirements of part B **and part C** of the individuals with disabilities education act; and the regulations implementing the individuals with disabilities education act, 34 C.F.R. part 300 **and 34 C.F.R. part 303**, which are adopted by reference in these rules. Copies are available, at cost, from the Government Printing Office, Superintendent of Documents, P.O. Box 37195-7954, Pittsburgh, PA, 15250, or from the Center for Educational Networking, Eaton Intermediate School District, 1790 East Packard Highway, Charlotte, MI, 48813.

R 340.1701a Definitions; A to D.

Rule 1a. As used in these rules:

(a) "Adaptive behavior" means a student's ability to perform the social roles appropriate for a person of his or her age and gender in a manner that meets the expectations of home, culture, school, neighborhood, and other relevant groups in which he or she participates.

(b) "Agency" means a public or private entity or organization, including the local school district, public school academy, intermediate school district, the department, and any other political subdivision of the state that is responsible for providing education or services to students with disabilities.

(c) "Complaint" means a written and signed allegation that includes the facts on which the allegation is based, by an individual or an organization, that there is a violation of any of the following:

(i) Any current provision of these rules.

(ii) 1976 PA 451, MCL 380.1 et seq., as it pertains to special education programs and services.

(iii) The individuals with disabilities education act of ~~1997~~ **2004**, 20 U.S.C., chapter 33, §1400 et seq., and the regulations implementing the act, 34 C.F.R. part 300 **and 34 C.F.R. part 303**.

(iv) An intermediate school district plan.

(v) An individualized education program team report, hearing officer decision, **administrative law judge decision,** or court decision regarding special education programs or services.

(vi) The state application for federal funds under the individuals with disabilities education act.

(d) "Department" means the state department of education.

(e) "Departmentalize" means a delivery system in which 2 or more special education teachers teach groups of students with disabilities by instructional content areas.

R 340.1701b Definitions; I to P.

Rule 1b. As used in these rules:

(a) "Instructional services" means services provided by teaching personnel that are specially designed to meet the unique needs of a student with a disability. These may be provided by any of the following:

(i) An early childhood special education teacher under R 340.1755.

(ii) A teacher consultant under R 340.1749.

(iii) A teacher of the speech and language impaired under R 340.1745.

(iv) A teacher providing instruction to students with disabilities who are homebound or hospitalized.

(v) A teacher providing instruction to students who are placed in juvenile detention facilities under R 340.1757.

(b) "Multidisciplinary evaluation team" means a minimum of 2 persons who are responsible for evaluating a student suspected of having a disability. The team shall include at least 1 special education teacher or other specialist who has knowledge of the suspected disability.

(c) "Normal course of study" means a general or a special education curriculum leading to a high school diploma.

(d) "Occupational therapy" means therapy provided by a therapist who has been registered by the American occupational therapy association or an occupational therapy assistant who has been certified by the American occupational therapy association and who provides therapy under the supervision of a registered occupational therapist.

(e) "Parent" means any of the following:

(i) A ~~natural~~ **biological** or adoptive parent of a ~~student or youth with a disability~~ **child**.

(ii) A ~~guardian, but not the state, if the student or youth with a disability is a ward of the state~~ **foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent**.

(iii) A ~~person acting in the place of a parent, such as a grandparent or stepparent with whom the student or youth with a disability lives or a person who is legally responsible for the welfare of a student or youth with a disability~~ **guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state**.

(iv) A**n** ~~surrogate parent who has been appointed in accordance with state board of education policy~~ i**ndividual acting in the place of a biological or adoptive parent, including a grandparent,**

stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare.

(v) A ~~foster parent if both of the following provisions are satisfied:~~ **surrogate parent who has been appointed in accordance with R 340.1725f**.

~~(A) The natural parent's authority to make educational decisions on behalf of the student or youth with a disability has been extinguished under state law.~~

~~The foster parent satisfies all of the following provisions:~~

~~(1) Has an ongoing, long-term parental relationship with the student or youth with a disability.~~

~~(2) Is willing to make the educational decisions required of parents.~~

~~(3) Has no interest that would conflict with the interests of the student or youth with a disability~~.

(vi) Except as provided in paragraph (vii) of this subdivision, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraphs (i) to (v) of this subdivision to act as a parent, shall be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(vii) If judicial decree or order identifies a specific person or persons under paragraphs (i) to (iv) of this subdivision to act as the parent of a child, or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent.

~~(vi)~~ **(viii)** The affected student or youth with a disability when the student or youth with a disability reaches 18 years of age, if a legal guardian has not been appointed by appropriate court proceedings.

(f) "Parent advisory committee" means a committee of parents of students with disabilities of a particular intermediate school district appointed by the board of that district under R 340.1838.

(g) "Physical therapy" means therapy prescribed by a physician and provided by a therapist who is licensed by the state of Michigan under 1978 PA 368, MCL 333.1101 et seq. or a physical therapy assistant who provides therapy under the supervision of a licensed physical therapist.

R 340.1701c Definitions; R to Y.

Rule 1c. As used in these rules:

(a) "Related services" means services defined at 34 C.F.R. §300.~~24~~ **34** and ancillary services as defined in 1976 PA 451, MCL 380.1 et seq., which is available for public review at the department and at intermediate school districts.

(b) "Services" means instructional or related services as defined in these rules.

(c) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique educational needs of the student with a disability and to develop the student's maximum potential. Special education includes instructional services defined in R 340.1701b(a) and related services.

(d) "Youth placed in a juvenile detention facility" means a student who is placed by the court in a detention facility for juvenile delinquents and who is not attending a regular school program due to court order.

R 340.1713 Specific learning disability defined; determination.

Rule 13. (1) "Specific learning disability" means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in ~~an~~ **the** imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations~~.~~, ~~The term includes such~~ **including** conditions **such** as perceptual ~~impairments~~ **disabilities**, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. ~~The term~~ **Specific**

learning disability does not include ~~children who have~~ learning problems that are primarily the result of ~~a~~ visual, hearing, or motor ~~impairment~~ **disabilities**, of ~~a~~ cognitive impairment, of ~~an~~ emotional impairment, of autism spectrum disorder, or of environmental, cultural, or economic disadvantage.

~~(2) The individualized education program team may determine that a child has a specific learning disability if the child does not achieve commensurate with his or her age and ability levels in 1 or more of the areas listed in this subrule, when provided with learning experiences appropriate for the child's age and ability levels, and if the multidisciplinary evaluation team finds that a child has a severe discrepancy between achievement and intellectual ability in 1 or more of the following areas:~~

~~(a) Oral expression.~~

~~(b) Listening comprehension.~~

~~(c) Written expression.~~

~~(d) Basic reading skill.~~

~~(e) Reading comprehension.~~

~~(f) Mathematics calculation.~~

~~(g) Mathematics reasoning.~~

~~(3) The individualized education program team shall not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of any of the following:~~

~~(a) A visual, hearing, or motor impairment.~~

~~(b) Cognitive impairment.~~

~~(c) Emotional impairment.~~

~~(d) Autism spectrum disorder.~~

~~(e) Environmental, cultural, or economic disadvantage.~~

~~(4) At least 1 individualized education program team member other than the student's general education teacher shall observe the student's academic performance in the general education classroom setting. For a child who is less than school age or who is out of school, an individualized education program team member shall observe the child in an environment appropriate for a child of that age.~~

~~(5) For a student suspected of having a specific learning disability, the documentation of the individualized education program team's determination of eligibility shall include a statement concerning all of the following:~~

~~(a) Whether the student has a specific learning disability.~~

~~(b) The basis for making the determination.~~

~~(c) The relevant behavior noted during the observation of the student.~~

~~(d) The relationship of that behavior to the student's academic functioning.~~

~~(e) The educationally relevant medical findings, if any.~~

~~(f) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services.~~

~~(g) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.~~

~~(6) Each individualized education program team member shall certify, in writing, whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member shall submit a separate statement presenting his or her conclusions.~~

~~(7)~~ **(2)** A determination of learning disability shall be based upon a comprehensive evaluation by a multidisciplinary evaluation team, which shall include at least both of the following:

(a) The student's general education teacher or, if the student does not have a general education teacher, a general education teacher qualified to teach a student of his or her age or, for a child of less than school age, an individual qualified by the state educational agency to teach a child of his or her age.

(b) At least 1 person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, an authorized provider of speech and language under R 340.1745(d), or a teacher consultant.

(3) In determining whether a student has a learning disability, the public agency may use a process that determines if the student responds to scientific, research-based interventions and is not required to consider whether a student has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

R 340.1721e Individualized education program team meeting; determination of eligibility for special education programs and services; individualized education program.

Rule 21e. (1) The superintendent or his or her designee shall convene an individualized education program team meeting.

(2) An individualized education program shall be based on all diagnostic, medical, and other evaluative information requested by the team, or provided by the parent or student who is disabled and shall include all of the following information, in writing:

(a) A statement of the student's present level of educational performance.

(b) A statement of annual goals~~, including short-term objectives~~.

~~(b)~~ **(c) For students who take alternate assessments aligned to alternate achievement standards, a statement of annual goals and short-term objectives.**

~~(c)~~ **(d)** Appropriate objective criteria and evaluation procedures and schedules for determining whether the objectives are being achieved.

(3) The individualized education program team shall determine whether the student has a need for placement with a special education teacher who is endorsed in a particular disability category. ~~This subrule takes effect on July 1, 2003.~~

(4) Any participant in the individualized education program team's deliberations who disagrees, in whole or in part, with the team's determination may indicate the reasons ~~therefore~~ on the team's individualized education program report or may submit a written statement to be attached to the report.

(5) The Michigan school for the deaf shall be considered a part of the total continuum of services for students with a hearing impairment. The resident district shall conduct the individualized education program team meeting that initiates an assignment into the Michigan school for the deaf. Representatives of the intermediate school district of residence and the Michigan school for the deaf shall be invited to participate in the individualized education program team meeting. The state board of education shall adopt procedures for placement at the Michigan school for the deaf.

(6) The Michigan school for the blind shall be considered a part of the total continuum of services for students with a visual impairment. The resident district shall conduct the individualized education program team meeting that initiates an assignment into the Michigan school for the blind. Representatives of the intermediate school district of residence and the Michigan school for the blind shall be invited to participate in the individualized education program team meeting. The state board of education shall adopt procedures for placement at the Michigan school for the blind.

R 340.1722a Implementation of individualized education program.

Rule 22a. (1) The superintendent of the school district of residence, upon receipt of the individualized education program, shall, within 7 calendar days, provide written notice to the parent of the agency's intent to ~~implement~~ **initiate or refuse to initiate** special education programs and services. The notice shall identify where the programs and services are to be provided and when the individualized education program begins.

(2) The parent, upon receipt of notification from the superintendent, shall have the right, at any time, to appeal the decision under R 340.1724. If the parent does not appeal, then the superintendent shall initiate the individualized education program as soon as possible, but not later than 15 school days after the parent has been notified. An initiation date may be later than 15 school days if clearly specified in the individualized education program; however, a projected initiation date shall not be used to deny or delay programs or services because they are not available and shall not be used for purposes of administrative convenience.

(3) **For the purposes of 34 C.F.R. 300.300(b),** ~~I~~if a student with a disability is to be provided special education or related services for the first time, then the parent has 10 calendar days after receipt of the notice from the superintendent to provide the public agency with written consent to provide special education programs and services. ~~If the parent refuses consent or does not respond, then the public agency has the right to request a hearing under R 340.1724.~~

(4) Each public agency shall provide special education and related services to a student with a disability in accordance with the student's individualized education program.

R 340.1722e Previous enrollment in special education.

Rule 22e. (1) If a student who currently receives special education programs or services enrolls in a new school district, then the new school district shall do either of the following:

(a) With the parent's consent, immediately implement the student's current individualized education program.

(b) With the parent's consent, immediately place the student in an appropriate program or service and convene an individualized education program team meeting within 30 school days to develop an individualized education program.

(2) If the parent does not provide consent for placement, then the school district**, in consultation with the parents, shall provide a free appropriate public education to the student, including services comparable to those described in the student's individualized education program from the previous public agency** ~~will implement the student's current individualized education program to the extent possible and~~. ~~a~~**A**n individualized education program team meeting shall be convened to develop a new individualized education program as soon as possible, but not later than 30 school days.

R 340.1723c Right to independent educational evaluation.

Rule 23c. (1) Each public agency shall provide parents with information about independent educational evaluations at public expense. The information shall include all of the following:

(a) Criteria regarding credentials for qualified examiners.

(b) Suggested sources and locations.

(c) Procedures for reimbursement.

(d) Reasonable expected costs.

(e) Notification that the parent is not restricted to choosing from sources suggested by the public agency.

(2) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. **A parent is entitled to only 1 independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.** The parent shall submit the parent's disagreement and request in written, signed, and dated form. However, the public agency may initiate a hearing under R 340.1724 to show that its evaluation is appropriate. The public agency shall respond, in writing, to the request within 7 calendar days of its receipt by indicating the public agency's intention to honor the request or to initiate the hearing procedure under R 340.1724. If the hearing officer determines that the

evaluation is appropriate, then the parent still has the right to an independent educational evaluation, but not at public expense.

(3) The ~~school district~~ **public agency** shall disclose to the parent, before evaluation, whether the examiner who was contracted to provide an independent educational evaluation provides services to the public agency that are in addition to the independent educational evaluation.

(4) An independent educational evaluation shall not be conducted by an examiner or examiners who otherwise or regularly contract with the public agency to provide services, unless the examiner or examiners are agreeable to the parent.

R 340.1724 ~~Impartial d~~**D**ue process ~~hearing~~ **complaints filed before July 1, 2006.**

Rule 24.(1) **This rule applies only to due process complaints filed before July 1, 2006.**

~~(1)~~ **(2)** A parent, the school district of residence, the school district of operation, the Michigan schools for the deaf and blind, or the department may initiate a hearing on any of the matters relating to the identification, evaluation, educational placement of the student, or the provision of a free appropriate public education. The party initiating a hearing shall notify the other parties, in writing, of its intent to initiate the hearing.

~~(2)~~ **(3)** The hearing shall be arranged or conducted by the district of residence and the district of residence shall pay all direct costs incurred by the school district as a result of arranging or conducting the hearing.

~~(3)~~ **(4)** Before the appointment or selection of a hearing officer, the hearing may be delayed or terminated upon written stipulation by the public agency and the parent. The agency responsible for the hearing shall submit the written stipulation to the department. After the appointment or selection of a hearing officer, the hearing may be delayed with the approval of the hearing officer or terminated upon written stipulation of the public agency and the parent. A copy of the stipulation to terminate shall be provided to the hearing officer and to the department.

(5) The superintendent of the public agency shall contract for the services of an impartial hearing officer who is mutually agreeable to both parties or who has been appointed by the department. If the parent and the public agency cannot agree on a hearing officer within 14 calendar days following the hearing request, then the superintendent shall immediately request that the department of education appoint an impartial hearing officer according to procedures established by the department.

(6) A hearing shall not be conducted by an employee or board member of the involved local school district, of another local school district within the same intermediate school district, of a public school academy within the same intermediate school district, or of the intermediate school district of which the involved local school district is a part.

(7) Each public agency shall keep a current department-developed and department-distributed list of the persons trained as hearing officers according to procedures established by the department who serve as hearing officers. This list shall be provided to parents upon any request for a hearing. The list shall include a statement of qualifications of each of the listed persons.

~~(4)~~ **(8)** Each public agency responsible for arranging or conducting a hearing shall immediately forward to the department 2 copies of the hearing decision~~.~~**,** 1 with all personal identifiers pertaining to the student deleted**,** and 1 with personal identifiers included.

~~(5)~~ **(9)** The department shall send a copy of the decision to the intermediate school district with a notice to inform the department that the decision has been implemented.

~~(6)~~ **(10)** Any party who is aggrieved by the findings and the decision of a hearing conducted under this rule may **request a state review of the decision. State review of a local hearing decision is**

administered by the department of education. A request for state review of a local hearing decision shall be received by ~~appeal to~~ the department within 25 calendar days of receipt of the decision ~~for a state review~~. The appealing party shall send a copy of the party's **request for a state review** ~~appeal~~ to the other party. ~~The department of education shall adopt procedures for appointment of review officers and an appeal process.~~

(11) Upon receipt of a request for a state review filed under subrule (10) of this rule, the department of education shall refer the request to the state office of administrative hearings and rules who shall appoint an administrative law judge to conduct the review in accordance with the individuals with disabilities education act, 20 U.S.C. §1401 et. seq., 1976 PA 451, MCL 380.1701 et. seq. and R 340.1883 to R 340.1885.

(12) Any party who is aggrieved by the final decision in a state review conducted under this rule may appeal to a court of competent jurisdiction within 90 days after the mailing date of the final decision.

~~(7)~~ **(13)** In the absence of an appeal, unless otherwise specified in the ~~hearing officer's decision~~ **administrative law judge's state review decision,** or the reviewing official's decision, the decision shall be implemented by the public agency within 15 school days of the agency's receipt of the decision.

R 340.1724a ~~Impartial hearing officer; appointment.~~ **Rescinded.**

~~Rule 24a. (1) The superintendent of the public agency shall contract for the services of an impartial hearing officer who is mutually agreeable to both parties or who has been appointed by the department. If the parent and the public agency cannot agree on a hearing officer within 14 calendar days following the hearing request, then the superintendent shall immediately request that the department appoint an impartial hearing officer according to procedures established by the department.~~

~~(2) A hearing shall not be conducted by an employee or board member of the involved local school district, of another local school district within the same intermediate school district, of a public school academy within the same intermediate school district, or of the intermediate school district of which the involved local school district is a part.~~

~~(3) Each public agency shall keep a current department-developed and department-distributed list of the persons trained as hearing officers according to procedures established by the department who serve as hearing officers. This list shall be provided to parents upon any request for a hearing. The list shall include a statement of qualifications of each of the listed persons.~~

R 340.1724c ~~Expedited hearings.~~ **Rescinded.**

~~Rule 24c. (1) The expedited hearing process shall be a 1-tier hearing process. The superintendent or chief executive officer of each public agency shall contract for the services of a mutually agreed upon impartial special education hearing officer within 5 business days of receipt of a written request for an expedited hearing.~~

~~(2) If the parties to an expedited hearing cannot mutually agree on the selection of an impartial special education hearing officer, then the public agency shall request the department to immediately appoint a special education hearing officer from the current department-developed and department-distributed list of the persons who serve as hearing officers as required by R 340.1724a(3).~~

~~(3) Expedited hearings shall address only those issues of disagreement relating to any of the following:~~

~~(a) A determination that a student's behavior was not a manifestation of the student's disability.~~

~~(b) A decision regarding the provision of an appropriate interim alternative educational setting.~~

~~(c) Seeking an interim alternative setting for not more than 45 days for a student who may demonstrate potential harmful or injurious behavior to himself, herself, or others.~~

~~(4) The parties to an expedited hearing shall, within 5 business days before the hearing, provide the other party with a list of potential witnesses and any documents to be used as evidence, including, but not limited to, any pertinent evaluations and recommendations.~~

~~(5) The special education hearing officer has the authority to rule on a request to bar any evidence to be used in an expedited hearing not disclosed to the other party at least 5 business days before the expedited hearing only when the introduction of evidence is disputed by the other party.~~

~~(6) The special education hearing officer shall render and mail a final decision to all parties within 45 calendar days after the receipt of the written request for an expedited hearing from the superintendent or chief executive officer or his or her designee without exceptions or time extensions.~~

~~(7) Any party to the expedited hearing who is aggrieved by the decision of the hearing officer may appeal the decision to a court of competent jurisdiction.~~

R 340.1724d Mediation.

Rule 24d.(1) A parent or public agency may request a mediation process in which the relief sought consists of a mutually agreeable settlement between the parties of a dispute that might be the subject of a **state special education** complaint under part 8 of the rules or a due process ~~hearing~~ **complaint** under R 340.1724 or R 340.1724~~(c)~~**(f)**.

~~(2) The mediator shall be subject to mutual agreement by the parties~~.

~~(3)~~ **(2)** The state board **of education** shall approve procedures regarding the mediation process.

R 340.1724e ~~State due process hearings; application; effective date; reimbursement.~~ **Rescinded.**

~~Rule 24e. Effective immediately, R 340.1724e, R 340.1724f, R 340.1724g, R 340.1724h, and R 340.1724i apply to special education due process hearings and state level reviews of local due process hearing decisions. R 340.1724e, R 340.1724f, R 340.1724g, R 340.1724h, and R 340.1724i also apply to any due process proceeding required by a judicial order of remand rendered after July 1, 2006.~~

R 340.1724f ~~State d~~ **Due** process ~~hearings~~ **complaints**; procedures.

Rule 24f.(1) **This rule applies only to due process complaints filed on or after July 1, 2006.**

~~(1)~~ **(2)** Due process ~~hearings~~ **complaints** under this rule shall be administered by the ~~D~~**d**epartment of ~~E~~**e**ducation.

~~(2)~~ **(3)** A parent, a public agency, or the ~~D~~**d**epartment of ~~E~~**e**ducation may initiate a hearing by filing a written due process ~~hearing~~ complaint with the ~~D~~**d**epartment of ~~E~~**e**ducation as required by 20 U.S.C. §1415(b) and by providing a copy of the due process ~~hearing~~ complaint to the other parties. **The due process complaint is properly filed when the department of education and the other party have received the complaint.**

~~(3)~~ **(4)** A hearing may be initiated on matters related to any of the following:

(a) Identification.

(b) Evaluation.

(c) Educational Placement.

(d) Provision of a free appropriate public education.

(e) Provision of appropriate Part C services to the child or the child's family.

(f) Assignment of financial obligations for Part C services to the parents.

(g) Determination that behavior was not a manifestation of the student's disability.

(h) Determination of an appropriate interim alternative educational setting by the individualized education program team.

(i) Placement in an interim alternative setting for not more than 45 school days, because maintaining the current placement is substantially likely to result in injury to the student or others.

~~(4)~~ **(5)** Upon receipt of a due process ~~hearing~~ complaint ~~filed under subrule (2) of this rule on or after, July 1, 2006,~~ the ~~D~~**d**epartment of ~~E~~**e**ducation will ~~forward~~ **refer** the ~~request~~ **complaint** to the ~~S~~**s**tate ~~O~~**o**ffice of ~~A~~**a**dministrative ~~H~~**h**earings and ~~R~~**r**ules ~~who~~ **which** will appoint an ~~A~~**a**dministrative ~~L~~**l**aw ~~J~~**j**udge to conduct a hearing in accordance with the ~~I~~**i**ndividuals with ~~D~~**d**isabilities ~~E~~**e**ducation ~~Improvement~~ ~~A~~**a**ct, 20 U.S.C. §1401 et. seq., ~~the Michigan Mandatory Special Education Act,~~ **1976 PA 451,** MCL 380.1701 et. seq. ~~and~~**,** R 340.1883 to R 340.1885 **and these rules**.

~~(5)~~ **(6)** Any party who is aggrieved by the final decision in a hearing conducted under this rule ~~may not request a state level review under R 340.1724(6). Any party who is aggrieved by the final decision in a hearing conducted under this rule~~ may appeal to a court of competent jurisdiction within 90 days after the mailing date of the final decision.

~~(6)~~ **(7)** ~~In the absence of an appeal~~, ~~u~~**U**nless otherwise specified in the ~~A~~**a**dministrative ~~L~~**l**aw ~~J~~**j**udge's decision, the decision shall be implemented by the public agency within 15 school days of the agency's receipt of the decision.

R 340.1724g ~~State review decisions.~~ **Rescinded.**

~~Rule 24g. (1) State reviews authorized by 2000 AACS, R 340.1724(6) and originating from a due process hearing complaint filed before July 1, 2006 shall be administered by the Department of Education.~~

~~(2) Upon receipt of a request for a state review filed under subrule (1) of this rule, the Department of Education will forward the request to the State Office of Administrative Hearings and Rules who will appoint an Administrative Law Judge to conduct the review in accordance with the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1401 et. seq., the Michigan Mandatory Special Education Act, MCL 380.1701 et. seq. and R 340.1883 to R 340.1885.~~

~~(3) Any party who is aggrieved by the final decision in a state review conducted under this rule may appeal to a court of competent jurisdiction within 90 days after the mailing date of the final decision.~~

~~(4) In the absence of an appeal, unless otherwise specified in the Administrative Law Judge's state review decision, the decision shall be implemented by the public agency within 15 school days of the agency's receipt of the decision.~~

~~(5) To the extent consistent with these rules, the state review process is governed by R 340.1724(6).~~

R 340.1724h Administrative ~~L~~**l**aw ~~J~~**j**udge training.

Rule 24h. The ~~D~~**d**epartment of ~~E~~**e**ducation, in conjunction with the ~~S~~**s**tate ~~O~~**o**ffice of ~~A~~**a**dministrative ~~H~~**h**earings and ~~R~~**r**ules, will assure that ~~A~~**a**dministrative ~~L~~**l**aw ~~J~~**j**udges conducting hearings under these rules will be trained, as needed, regarding administrative law, administrative procedure, special education law, special education rules, special education policy, and special education practice.

R 340.1724i Reimbursement.

Rule 24i. **This rule applies only to due process complaints filed on or after July 1, 2006.** For purposes of MCL 380.1752, this rule replaces R 340.1882(4), which was rescinded. The district of residence or public school academy shall reimburse the State 75% of the costs related to providing the due process hearing.

R 340.1738 Programs for students with severe cognitive impairment.

Rule 38. Programs for students with severe cognitive impairment shall be operated as follows:

(a) There shall be 1 teacher and 2 instructional aides for a maximum of 12 students. The maximum number of students may be extended to 15 if an additional instructional aide is assigned with the placement of the thirteenth student. At least 1 full-time teacher and 1 full-time aide shall be employed in every program for students with severe cognitive impairment.

~~(b) Programs for students with severe cognitive impairment shall consist of a minimum of 230 days and 1,150 clock hours of instruction. The first 5 days when pupil instruction is not provided because of conditions not within the control of school authorities, such as severe storms, fires, epidemics, or health conditions as defined by the city, county, or state health authorities, shall be counted as days of pupil instruction. Subsequent days shall not be counted as days of pupil instruction.~~

~~(c)~~ **(b)** Teachers shall be responsible for the instructional program and shall coordinate the activities of aides and supportive professional personnel.

~~(d)~~ **(c)** Instructional aides shall work under the supervision of the teacher and assist in the student's daily training program.

~~(e)~~ **(d)** Program assistants may assist the teacher and the instructional aides in the feeding, lifting, and individualized care of students with severe cognitive impairment.

~~(f)~~ **(e)** A registered nurse shall be reasonably available.

R 340.1748 Programs for students with severe multiple impairments.

Rule 48. (1) Programs and services for students with severe multiple impairments shall consist of at least 1 teacher and 2 instructional aides for a maximum of 9 students. At least 1 full-time teacher and 1 full-time aide shall be employed in every program for students with severe multiple impairments.

~~(2) Programs for students with severe multiple impairments shall consist of a minimum of 230 days and 1,150 clock hours of instruction. The first 5 days when pupil instruction is not provided because of conditions not within the control of school authorities, such as severe storms, fires, epidemics, or health conditions as defined by the city, county, or state health authorities, shall be counted as days of pupil instruction. Subsequent days shall not be counted as days of pupil instruction~~.

~~(3)~~ **(2)** A registered nurse shall be reasonably available.

R 340.1771 Director of special education; education and experience requirements.

Rule 71. (1) For full approval, a director of special education shall possess all of the following minimum qualifications:

(a) A~~n earned~~ master's degree or ~~equivalent~~ **higher**.

(b) Full approval in at least 1 area of special education.

(c) Three years of successful professional practice or administrative experience in special education, or a combination of practice and experience.

(d) Thirty semester or equivalent hours of graduate credit and a successful 200-clock-hour practicum in special education administration. Graduate credit shall be earned in a college or university whose program has been approved by the state board of education and shall be distributed appropriately to assure knowledge and competency as related to special education in all of the following areas:

(i) Program development and evaluation.

(ii) Personnel staffing, supervision, and evaluation.

(iii) ~~Interpersonal relationships, communications, persuasion, and morale~~ **Verbal and written communication**.

(iv) ~~Evaluation of inservice organization and management~~ **Leadership of professional development**.

(v) ~~Budgeting, financing, and reporting~~ **Budget development and fiscal reporting**.

(vi) ~~Parent relationships~~ **Fostering parental, family, and community involvement**.

~~(vii) School plant planning.~~

~~(viii)~~ **(vii)** Consultation **and collaboration**.

~~(ix) Research and grant writing.~~

~~(x) Office management, including office automation.~~

~~(xi)~~ **(viii)** ~~School-related legal activities and due process hearing~~ **Dispute resolution**.

~~(xii)~~ **(ix)** ~~Computer-assisted management~~ **Data-based decision-making**.

(x) Conflict management.

(xi) Legal and ethical issues.

~~(e) One year of successful experience as a special education director in an approved special education program.~~

~~(f)~~ **(e)** Verification from a college or university approved for the preparation of special education directors ~~which attests that the person has acquired the knowledge and competencies in subdivision (d) of this subrule and has demonstrated leadership ability and general knowledge of issues and problems in all disability areas of special education~~.

(2) A director of special education ~~programs~~ who has full approval status shall maintain full approval status indefinitely.

(3) For temporary approval, a director of special education shall possess all of the following minimum qualifications:

(a) A~~n earned~~ master's degree or ~~equivalent~~ **higher**.

(b) Full approval in at least 1 area of special education.

(c) Three years of successful professional practice or administrative experience in education, or a combination of practice and experience.

(d) Twelve semester or equivalent hours of graduate credit ~~and a successful 200-clock-hour practicum~~ in special education administration. Graduate credit shall be earned in a college or university whose program has been approved by the state board of education ~~and shall be distributed appropriately to assure knowledge and competency related to special education in the areas designated in subrule (1)(d) of this rule~~.

(e) The college or university approved for the preparation of special education directors shall verify enrollment in the director of special education preparation program and ~~the~~ completion of ~~the practicum specified in subdivision (d) of this subrule~~ **12 semester or equivalent hours of graduate credit**.

(4) Continuation of temporary approval is dependent upon the satisfactory completion of not less than 6 semester or equivalent hours of required credit toward full approval before the beginning of the next school year.

(5) Any person who has completed all ~~course work and practicum~~ **program** requirements in effect before the effective date of these rules shall ~~only be required to complete 1 year of successful experience as a director to gain~~ **be eligible for** full approval **as a director of special education**.

R 340.1772 Supervisor of special education; education and experience requirements.

Rule 72. (1) For full approval, a supervisor of special education shall possess all of the following minimum qualifications:

(a) A~~n earned~~ master's degree or ~~equivalent~~ **higher**.

(b) Full approval in at least 1 area of special education.

(c) Three years of successful experience in special education.

(d) Twelve semester or equivalent hours of graduate credit in a college or university whose program has been approved by the state board of education. Graduate credit shall be distributed

appropriately to assure knowledge and competency as related to special education in all of the following areas:

(i) ~~Systematic study of c~~**C**urriculum **and instruction**.

(ii) Administrative ~~and supervisory~~ procedures.

(iii) ~~Evaluation methods and procedures~~ **Personnel supervision and evaluation**.

(iv) Communication skills ~~techniques~~.

(v) ~~Inservice education~~ **Leadership of professional development**.

(vi) ~~Computer-aided instruction~~ **Facilitation of effective instruction**.

(vii) Data-based program improvement.

(viii) School law and policy.

~~(e) One year of successful experience as a supervisor of special education in an approved special education program.~~

~~(f)~~ **(e)** Verification from a college or university approved for the preparation of special education supervisors ~~relative to leadership, knowledge, and competency in the areas listed in subdivision (d) of this subrule~~.

(2) A supervisor of special education ~~programs~~ who has full approval status shall maintain full approval status indefinitely.

(3) For temporary approval, a supervisor of special education shall possess all of the following minimum qualifications:

(a) A~~n earned~~ master's degree or ~~equivalent~~ **higher**.

(b) Full approval in at least 1 area of special education.

(c) Three years of successful experience in special education.

(d) Verification from a college or university approved by the state board of education for preparation of special education supervisors of enrollment in the supervisor of special education program.

(4) Continuation of temporary approval is dependent upon the satisfactory completion of not less than 6 semester or equivalent hours of required credit toward full approval before the beginning of the next school year.

(5) Any person who has completed all ~~course work and practicum~~ **program** requirements in effect before the effective date of these rules shall ~~only be required to complete 1 year of successful experience as a supervisor to gain~~ **be eligible for** full approval **as a supervisor of special education**.

R 340.1790 Teacher consultants for students with disabilities.

Rule 90. In addition to meeting all of the requirements of R 340.1782, a teacher consultant shall meet ~~all~~ **both** of the following requirements for full approval by the state board of education or its designee:

(a) Possess a master's degree in education or a field of study related to special education.

~~(b) Recommendation to the department by the employing superintendent, or his or her designee, for approval as a teacher consultant.~~

~~(c)~~ **(b)** Show evidence of a minimum of 3 years of satisfactory teaching experience, not less than 2 years of which shall be teaching in a special education program.

R 340.1810 Reimbursement of special education transportation.

Rule 110. Specialized transportation or additional transportation, or both, as required in the individualized education program for a ~~handicapped~~ person **with a disability** to receive a free appropriate public education in the least restrictive educational environment, shall be reimbursable as

authorized by 1979 PA 94, ~~as amended,~~ MCL 388.1601 et seq., and known as the state school aid act of 1979.

R 340.1832 Content areas.

Rule 132. ~~(1)~~ An intermediate school district plan for special education, or any modification thereof, shall be an operational plan that sets forth the special education programs and related services to be delivered. The plan shall comply with 1976 PA 451, MCL 380.1 et seq. and these rules. The plan shall also comply with the following format and include, at a minimum, all of the following:

(a) A description of the procedures used by the intermediate school district to advise and inform students with disabilities, their parents, and other members of the community of the special education opportunities required under the law; the obligations of the local school districts, public school academies, and intermediate school district; and the title, address, and telephone number of representatives of those agencies who can provide information about the special education opportunities.

(b) A description of activities and outreach methods which are used to ensure that all citizens are aware of the availability of special education programs and services.

(c) A description of the type of diagnostic and related services that are available, either directly or as a purchased service, within the intermediate school district or its constituent local school districts or public school academies.

(d) A description of the special education programs designed to meet the educational needs of students with disabilities.

(e) The intermediate school district plan shall either describe special education programs and services under part 3 of these rules or shall propose alternative special education programs and services.

(f) ~~The plan shall be approved by the superintendent of public instruction before implementation under R 340.1831(1). The plan is developed and approved under R 340.1833, and R 340.1835 to R 340.1837.~~ **Provide an assurance statement that any personally identifiable data, information, and records of students with disabilities are collected, used, or maintained in compliance with 34 C.F.R. §§300.610 through 300.626.**

(g) The identity of the full- or part-time constituent local school district or public school academy administrator who, by position, is responsible for the implementation of special education programs and services.

(h) A description of the qualifications of paraprofessional personnel.

(i) A description of the transportation necessary to provide the special education programs and services described in subdivisions (c), (d), and (e) of this subrule.

(j) A description of the method of distribution of funds under R 340.1811(5).

(k) A description of how the intermediate school district will appoint the parent advisory committee members under R 340.1838(1) and (2).

(l) A description of the role and responsibilities of the parent advisory committee, including how it shall participate in the cooperative development of the intermediate school district plan, formulate objections thereto, if any, and **other** related matters~~, such as the role and responsibility of the parent advisory committee in evaluating special education programs and services within the intermediate school district~~.

(m) A description of the role and relationship of administrative and other school personnel, as well as representatives of other agencies, in assisting the parent advisory committee in its responsibilities.

(n) A description of the fiscal and staff resources that shall be secured or allocated to the parent advisory committee by the intermediate school district to make it efficient and effective in operation.

(o) The plan shall be approved by the superintendent of public instruction before implementation under R 340.1831(1). The plan is developed and approved under R 340.1833~~,~~ and R 340.1835 to R 340.1837.

R 340.1837 Approval of intermediate school district plans.

Rule 137. (1) Intermediate school district plans, or modification thereof, or any changes to the intermediate school district plan based on an objection to the plan, shall be approved by the superintendent of public instruction under R 340.1836. The intermediate school district plans or modifications shall be in compliance with all of the following:

(a) The provisions of sections 1701 to 1766 of 1976 PA 451, MCL 380.1701 to 380.1766.

(b) Michigan rules promulgated to implement statutory provisions for special education programs and services.

(c) The individuals with disabilities education act, 20 U.S.C. §1400 et seq., and its implementing regulations, 34 C.F.R. §300.1 et seq., adopted by reference in R 340.1701.

(2) **The** ~~I~~**i**ntermediate school district ~~boards of education,~~ **shall advise each** constituent local school ~~boards~~ **district superintendent, each chief executive officer of a** public school ~~academies~~ **academy**, and the **chairperson of the** parent advisory committee ~~shall be advised by the superintendent of public instruction~~ as to whether the intermediate school district plan **was approved by the superintendent of public instruction**.

R 340.1861 Records; maintenance; content; transfer of records; release of records.

Rule 161. (1) A registry shall be maintained by intermediate school districts under procedures established by the department and under the provisions of 1976 PA 451, MCL 380.1711, for all students with disabilities, as defined by R 340.1702, including students placed in state and privately operated facilities. The registry shall be an operational, active database system with the capacity to provide up-to-date student counts and other data requirements to the department on a timely basis. Each constituent local school district, public school academy, or state agency shall provide the intermediate school district with a complete updated data record for each student with a disability. The updated record shall contain full-time equivalency data for each student enrolled in a special education program by the student count dates required in the state school aid act, 1979 PA 94, MCL 388.1601 et seq., and shall contain each student's data enrolled in programs and services by the student count date required by the regulations implementing the individuals with disabilities education act, 34 C.F.R. §300.1 et seq.

(2) If the residency of a student with a disability changes from one intermediate school district to another, then the intermediate school district of previous residence shall transfer the records maintained under this rule to the new intermediate school district upon written request of the intermediate school district of residence and the parent of the student with a disability for whom the record was maintained.

(3) Public agencies shall comply with 34 C.F.R. 300.610 to 300.626.

NOTICE OF PUBLIC HEARING

SOAHR 2007-015
MICHIGAN DEPARTMENT F EDUCATION
NOTICE OF PUBLIC HEARING

The Michigan Department of Education, Office of Special Education and Early Intervention Services will conduct public hearings to receive public comment on the following proposed administrative rules and documents:

Special Education Programs and Services Administrative Rules (2007-015 ED)
Procedural Safeguards Notice
Special Education Considerations in Student Discipline Procedures
Intermediate School District Plan Criteria for the Delivery of Special Education Programs and Services
Policy for the Appointment of Surrogate Parents for Special Education Services
Model State Complaint and Due Process Complaint Forms

The rules are promulgated by the authority conferred on the superintendent of public instruction by sections 1701 and 1703 of 1976 PA 451, MCL 380.1701 and MCL 380.1703, and Executive Reorganization Order Nos. 1996-6 and 1996-7, MCL 388.993 and MCL 388.994.

The proposed rules will bring the administrative rules into alignment with the reauthorized Individuals with Disabilities Education Act and update outdated language. The proposed rules are accessible on the internet at www.michigan.gov/ose-eis under "Spotlight." These rules are published in the June 1, 2007, *Michigan Register*. The rules are proposed to take effect upon the filing with the Secretary of State.

In addition, the Michigan Department of Education, Office of Administrative Law and Federal Relations will also conduct public hearings to receive public comments on the following proposed administrative rule:

Teachers' Tenure (2007-016 ED)

The rule is promulgated by the authority conferred on the superintendent of public instruction by section 2 of 1937 PA 4, MCL 38.72, section 15 of 1964 PA 287, MCL 388.1015 and Executive Reorganization Order Nos. 1996-6 and 1996-7,MCL 388.993and MCL 388.994.

The proposed rule would expand the current interpretation of the term teacher to include teachers of students with speech and language impairment who hold any Michigan teaching certificate with an endorsement in speech and language impairment who are not classroom teachers but provide services to speech and language impaired students. The proposed rules are accessible on the internet at www.michigan.gov/mde-publiccomment. The rule is published in the June 1, 2007, *Michigan Register*. The rule is proposed to take effect upon the filing with the Secretary of State.

Public hearings for both rule sets will be held at the following sites:

Monday, June 11, 2007 from 6:30 - 8:30 p.m. and **Tuesday, June 12, 2007** from 9:00 – 11:00 a.m. at **Oakland Schools**, Conference Room A, 2111 Pontiac Lake Road,
Waterford, MI, 48328, 248-209-2000

Tuesday, June 12, 2007 from 6:30 – 8:30 p.m. and **Wednesday, June 13, 2007,** from 9:00 – 11:00 a.m. at **Kirtland Community College**, Kirtland House, 10775 North, Saint Helen Road, Roscommon, MI, 48653, 989-275-5000, ext 418.

Wednesday, June 13, 2007 from 6:30 – 8:30 p.m. and **Thursday, June 14, 2007** from 9:00 a.m. – 11:00 a.m. at **Ingham Intermediate School District**, Capitol Area Career Center, 611 Hagadorn Road, Mason, MI, 48854, 517-373-0924.

Oral or written comment may be presented in person at the hearing or submitted in writing by mail, e-mail, or facsimile no later than 5:00, July 20, 2007. All comment will be reviewed and considered in the final version of the rules. Comments may be submitted to the following:

Special Education Rules and Documents (2007-015 ED)
Public Comment, Office of Special Education and Early Intervention Services, Michigan Department of Education, P.O. Box 30008, Lansing, MI 48909
Email: mde-ose@michigan.gov or Fax: 517-373-7504.

Teachers' Tenure Rule (2007-016 ED)
Public Comment, Office of Administrative Law and Federal Relations, Michigan Department of Education, P.O. Box 30008, Lansing, MI 48909
Email: drostelk@michigan.gov or Fax: 517-373-9238.

If special accommodations are needed to participate in the public hearings, contact Meredith Hines at 517-373-0924 or email at hinesm@michigan.gov by June 1, 2007.

PROPOSED ADMINISTRATIVE RULES

SOAHR 2007-016

DEPARTMENT OF EDUCATION

SUPERINTENDENT OF PUBLIC INSTRUCTION

TEACHERS' TENURE

Filed with the Secretary of State on
These rules take effect immediately upon filing with the Secretary of State

(By authority conferred on the superintendent of public instruction by section 2 of 1937 PA 4, MCL 38.72, section 15 of 1964 PA 287, MCL 388.1015 and Executive Reorganization Order Nos. 1996-6 and 1996-7, MCL 388.993 and MCL 388.994)

Draft March 22, 2007

R 390.661 of the Michigan Administrative Code is amended, as follows:

R 390.661 Certification of teachers under teachers' tenure act.

Rule 1. (1) For the purposes of teacher tenure under the provisions of article II of 1937 PA 4, MCL 38.81 to 38.84, "certificated," as it refers to teachers, shall include any teacher who holds a Michigan teaching certificate, as defined by R 390.1101, which is valid for the position to which he or she is assigned, or any teacher employed in a school guidance counselor position holding any Michigan teaching certificate with a school guidance counselor endorsement, **or any teacher of students with speech and language impairment who provides speech and language services and who holds any Michigan teaching certificate with an endorsement in speech and language impairment,** but shall not include nondegreed persons who hold special certificates as teachers or teacher aides in training in experimental programs.

(2) For the purposes of article III of 1937 PA 4, MCL 38.91 to 38.92, "certificated" shall include any teacher who holds a Michigan teaching certificate as defined by R 390.1101, but shall not include nondegreed persons who hold special certificates as teachers or teacher aides in training in experimental programs.

NOTICE OF PUBLIC HEARING

SOAHR 2007-016
MICHIGAN DEPARTMENT F EDUCATION
NOTICE OF PUBLIC HEARING

The Michigan Department of Education, Office of Special Education and Early Intervention Services will conduct public hearings to receive public comment on the following proposed administrative rules and documents:

Special Education Programs and Services Administrative Rules (2007-015 ED)
Procedural Safeguards Notice
Special Education Considerations in Student Discipline Procedures
Intermediate School District Plan Criteria for the Delivery of Special Education Programs and Services
Policy for the Appointment of Surrogate Parents for Special Education Services
Model State Complaint and Due Process Complaint Forms

The rules are promulgated by the authority conferred on the superintendent of public instruction by sections 1701 and 1703 of 1976 PA 451, MCL 380.1701 and MCL 380.1703, and Executive Reorganization Order Nos. 1996-6 and 1996-7, MCL 388.993 and MCL 388.994.

The proposed rules will bring the administrative rules into alignment with the reauthorized Individuals with Disabilities Education Act and update outdated language. The proposed rules are accessible on the internet at www.michigan.gov/ose-eis under "Spotlight." These rules are published in the June 1, 2007, *Michigan Register*. The rules are proposed to take effect upon the filing with the Secretary of State.

In addition, the Michigan Department of Education, Office of Administrative Law and Federal Relations will also conduct public hearings to receive public comments on the following proposed administrative rule:

Teachers' Tenure (2007-016 ED)

The rule is promulgated by the authority conferred on the superintendent of public instruction by section 2 of 1937 PA 4, MCL 38.72, section 15 of 1964 PA 287, MCL 388.1015 and Executive Reorganization Order Nos. 1996-6 and 1996-7,MCL 388.993and MCL 388.994.

The proposed rule would expand the current interpretation of the term teacher to include teachers of students with speech and language impairment who hold any Michigan teaching certificate with an endorsement in speech and language impairment who are not classroom teachers but provide services to speech and language impaired students. The proposed rules are accessible on the internet at www.michigan.gov/mde-publiccomment. The rule is published in the June 1, 2007, *Michigan Register*. The rule is proposed to take effect upon the filing with the Secretary of State.

Public hearings for both rule sets will be held at the following sites:

Tuesday, June 12, 2007 from 6:30 – 8:30 p.m. and **Wednesday, June 13, 2007,** from 9:00 – 11:00 a.m. at **Kirtland Community College**, Kirtland House, 10775 North, Saint Helen Road, Roscommon, MI, 48653, 989-275-5000, ext 418.

Wednesday, June 13, 2007 from 6:30 – 8:30 p.m. and **Thursday, June 14, 2007** from 9:00 a.m. – 11:00 a.m. at **Ingham Intermediate School District**, Capitol Area Career Center, 611 Hagadorn Road, Mason, MI, 48854, 517-373-0924.

Oral or written comment may be presented in person at the hearing or submitted in writing by mail, e-mail, or facsimile no later than 5:00, July 20, 2007. All comment will be reviewed and considered in the final version of the rules. Comments may be submitted to the following:

Special Education Rules and Documents (2007-015 ED)
Public Comment, Office of Special Education and Early Intervention Services, Michigan Department of Education, P.O. Box 30008, Lansing, MI 48909
Email: mde-ose@michigan.gov or Fax: 517-373-7504.

Teachers' Tenure Rule (2007-016 ED)
Public Comment, Office of Administrative Law and Federal Relations, Michigan Department of Education, P.O. Box 30008, Lansing, MI 48909
Email: drostelk@michigan.gov or Fax: 517-373-9238.

If special accommodations are needed to participate in the public hearings, contact Meredith Hines at 517-373-0924 or email at hinesm@michigan.gov by June 1, 2007.

CORRECTION OF OBVIOUS ERRORS IN PUBLICATION

MCL 24.256(1) states in part:

"Sec. 56. (1) The State Office of Administrative Hearings and Rules shall perform the editorial work for the Michigan register and the Michigan Administrative Code and its annual supplement. The classification, arrangement, numbering, and indexing of rules shall be under the ownership and control of the State Office of Administrative Hearings and Rules, shall be uniform, and shall conform as nearly as practicable to the classification, arrangement, numbering, and indexing of the compiled laws. The State Office of Administrative Hearings and Rules may correct in the publications obvious errors in rules when requested by the promulgating agency to do so…"

CORRECTION OF OBVIOUS ERRORS IN PUBLICATION

April 30, 2007

Ms. Norene Lind, Administrative Rules Manager
State Office of Administrative Hearings and Rules
Department of Labor and Economic Growth
Ottawa Building - Fourth Floor
611 West Ottawa
Lansing, Michigan 48933-1070

Dear Ms. Lind:

SUBJECT: Correction to Administrative Rules Promulgated Pursuant to Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as Amended (Act 451), R 336.1912

The Department of Environmental Quality (DEQ) requests a correction of an obvious error be made to Part 9, Emission Limitations and Prohibitions—Miscellaneous,
R 336.1912(5), pursuant to Section 56(1) of the Michigan Administrative Procedures Act, 1969 PA 306, as amended, as follows:

> (a) The time and date~~,~~ ~~of~~ the probable causes or reasons for, and the duration of~~,~~ the abnormal conditions, start-up, shutdown, or malfunction.

The U.S. Environmental Protection Agency, Region 5, requested this correction when this rule was submitted to them as a State Implementation Plan revision. R 336.1912 was amended on July 26, 1995. A copy of the rule with the correction is enclosed.

If you have any questions, please contact me.

Sincerely,

Susan S. Maul
Acting Regulatory Reform Officer
517-241-1552

Enclosure
cc: Mr. Steven E. Chester, Director, DEQ
Mr. Jim Sygo, Deputy Director, DEQ
Mr. G. Vinson Hellwig, DEQ
Ms. Mary Ann Halbeisen, DEQ
Ms. Teresa Walker, DEQ

CORRECTION OF OBVIOUS ERRORS IN PUBLICATION

MEMORANDUM

DATE: May 11, 2007

TO: Norene Lind, Regulatory Affairs Manager
State Office of Administrative Hearings and Rules

FROM: Jeannine Benedict, Administrative Rules Specialist
MDLEG, Office of Policy and Legislative Affairs

SUBJECT: Request for correction of the Workers' Compensation Health Care Services Rule R 418.10401 , pursuant to Administrative Procedures Act, Section 56(1), MCL 24.256 (1).

DATE: 2007 MR 6, Eff. Apr. 2, 2007**.**

The Workers' Compensation Agency - Health Care Services division, as a promulgating agency, is writing to request that the State Office of Administrative Hearings and Rules exercise its discretion to an obvious error in the Workers' Compensation Health Care Services Rules, pursuant to the Administrative Procedures Act, Section 56(1), MCL 24.256 (1).

The error is contained in R 418.10401. The rule was promulgated as part of the annual revisions to the Health Care Services rules, 2007 MR 6, Eff. Apr. 2, 2007**.**

The electronic version indicates rule number R 418.10401 Global surgical procedure; services included, with Rule 401 after the heading.

The affected line currently reads (italics added):

Rule 401. (1) The surgical procedures in the Current Procedural Terminolgy as…

The language should read:

Rule 401. (1) The surgical procedures in the Current Procedural Terminology (adding an "o" after the "l" in Terminology) as...

If you have any questions about this transmittal, you may contact me at 517.335.2626.

cc: Agency Liaison, Michelle Mapes

NOTICE OF PROPOSED AND ADOPTED AGENCY GUIDELINES

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(h) Notice of proposed and adopted agency guidelines."

NOTICE OF PROPOSED AND ADOPTED AGENCY GUIDELINES

Notice of Adoption of Final Guidelines

May 7, 2007

State Office of Administrative Hearings and Rules (SOAHR)
Ottawa Building, 2nd Floor; 611 W. Ottawa
Lansing, Michigan 48909
SOAHR_Rules@michigan.gov

Notice of Adoption of Final Guidelines

To: All Domestic Mutual Insurers and all other Interested Persons:

The Office of Insurance and Financial Services (OFIS) in the Department of Labor and Economic Growth (DLEG) is publishing notice of adoption of final Guidelines for the Acquisition of Capital Stock upon Conversion of a Domestic Mutual Insurer to a Domestic Stock Insurer. The Notice of Proposed Guidelines dated January 29, 2007 and published in the February 15, 2007 edition of the Michigan Register permitted public comment until March 26, 2007 at 5 p.m. After consideration of one comment received, the Commissioner hereby adopts the Guidelines as originally proposed and unchanged. The guidelines include two parts. The first part - Background - references the specific, statutory provisions in question and describes the issues connected with the statutory language. The second part – Guidelines - details the six specific guidelines that OFIS will use when interpreting the statutory language in question. The content of the entire final adopted guidelines follows:

Guidelines for the Acquisition of Capital Stock upon Conversion
Of a Domestic Mutual Insurer to a Domestic Stock Insurer

BACKGROUND

Chapter 59 of the Michigan Insurance Code governs the conversion of a domestic mutual insurer to a domestic stock insurer. Questions have arisen with respect to three sections of the Code that govern the acquisition of stock, especially Section 5909 of the Code, MCL 500.5909, which provides:

> The plan shall provide that any person or group of persons acting in concert shall not acquire, through public offering or subscription rights, more than 5% of the capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan, as provided in section 5905(1)(c)(i)(A), (B), or (C), for 5 years from the effective date of the plan, except with the approval of the commissioner. This limitation does not apply to any entity that is to purchase 100% of the capital stock of the converted company as part of the plan of conversion approved by the commissioner.

The plan shall provide that no director or officer or person acting in concert with a director or officer of the mutual company shall acquire any capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan, as provided in section 5905(1)(c)(i)(A), (B), or (C), for 3 years after the effective date of the plan, except through a broker/dealer, without the permission of the commissioner. This provision does not prohibit the directors and officers from purchasing stock through subscription rights received in the plan pursuant to section 5911(1) or from participating in a tax qualified stock benefit plan pursuant to section 5913.

Stock options for the converted stock insurance company or the stock of another corporation that is participating in the conversion plan, as provided in section 5905(1)(c)(i)(A), (B), or (C), shall not be made available to the directors or officers of the company during the 2-year period following the effective date of the plan if the aggregate stock holdings of directors and officers exceed, or would exceed if the options were exercised, 25% of the total number of shares issued by the converted company if total assets of the company are less than $50,000,000.00, or 15% of the total number of shares issued for the converted company if total assets are more than $500,000,000.00. For converted companies with total assets of or between $50,000,000.00 and $500,000,000.00, the company size threshold for limiting stock options shall be interpolated.

Some issues involve Section 115(b) of the Code, MCL 500.115(b), in conjunction with Section 1311(1) of the Code, MCL 500.1311(1). Section 115(b) provides:

> As used in this act unless the context clearly indicates otherwise
>
> (b) "Control" including the terms "controlling", "controlled by", and "under common control with" mean the following:
>
> **(i) Except as otherwise provided in subparagraph (ii), the possession or the contingent or noncontingent right to acquire possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract including acquisition of assets or bulk reinsurance, other than a commercial contract for goods or nonmanagement services, by pledge of securities, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, by formal or informal arrangement, device, or understanding, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of any other person or for a mutual insurer owns 10% or more of the insurer's surplus through surplus notes, guarantee fund certificates or other evidence of indebtedness issued by the insurer….**

Section 1311(1) provides:

> A person other than the issuer shall not make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person directly or indirectly, or by conversion or by exercise of any right to acquire, would be in control of the insurer. A person shall not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time an offer, request, or invitation is made or an agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer which has sent to its shareholders, a statement containing the information required by this chapter and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this chapter.

The guidelines below set forth the policy of this agency respecting the acquisition of stock in a converted company. They are grounded in the statutory provisions identified above.

The guidelines take into account that there are limitations on stock acquisitions in connection with a plan of conversion and that there are filing and approval requirements in connection with any acquisition that may lead to a change in control of an insurer. At the same time, they recognize that the limitations and requirements must be applied in careful conformity with parameters contained in the statutory sections.

GUIDELINES

1. The 5% limitation. The 5% limitation in Section 5909(1) only applies to an acquisition through a public offering or subscription rights. It does not apply to subsequent acquisitions in the open market.

2. Approvals under Section 5909(1). Where a person seeks more than 5% of the stock in connection with a public offering or subscription rights, the Commissioner will ordinarily grant approval under Section 5909(1) if the person will be a passive investor. A person is a passive investor if the person will be purchasing the stock only for investment purposes and not to gain control of the company.

3. Changed intentions. If a person has obtained approval under Section 5909(1) and later decides to seek control of the company, no action will be taken under Section 5909(1), but any subsequent acquisition that will result in the person owning 10% or more of the stock will be subject to the filing and approval requirements of Section 1311(1).

4. Adherence to Business Plan. After conversion, the governance of a company rests in its Board of Directors, which is elected by the stockholders. Changed circumstances following the conversion may warrant the company's varying from the business plan submitted in connection with the conversion. The Commissioner will not ordinarily scrutinize these variances. However, it is important to emphasize that companies should take great care in the preparation of securities registration materials. A deviation from the original business plan may subject a company to potential civil liability if it disregards prior securities disclosures.

5. Stock repurchases. A stock repurchase by a converted company may lead an investor to have a higher percentage of the company's stock than intended. This gives rise to three issues:

Where an acquisition of stock through a public offering or subscription rights was less than 5% but later exceeds 5% due to a repurchase, no approval is required under Section 5909(1).

Where the repurchase will cause a person to change from owning less than 10% of the stock to owning 10% or more of the stock, the person is required to either make a Form A filing required by Section 1311(1) or request an exemption from Form A filing requirements under Section 1317 of the Code, MCL 500.1317. Where the person avers a passive investor status, the Commissioner will ordinarily grant an exemption.

Where the repurchase causes the aggregate stock holdings of directors and officers to exceed the limits set forth in Section 5909(3), stock options shall not be made available to the directors and officers.

6. Control. Several large investors that each own under 10% of the stock of a converted company may agree upon a new corporate direction and attempt to persuade management to follow this new direction. They may implicitly or explicitly threaten a proxy fight over the issue. A consensus among major investors may likely be taken into account by management, but this does not equate to the "power to direct or cause the direction" of the management and policies of the company, which is the test under Section 115(b). Their negotiations with management would not subject them to the filing and approval requirements of Section 1311(1).

Effective Date of Adopted Guideline

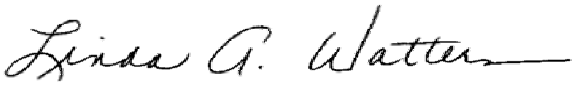
These Guidelines shall take effect on May 7, 2007. In conformity with Section 3(6) of the Administrative Procedures Act of 1969, MCL 24.203(6), the guidelines are a statement of policy which the agency intends to follow, which does not have the force or effect of law and which binds the agency but does not bind any other person.

Any questions regarding these Guidelines should be directed to:

Office of General Counsel
Office of Financial and Insurance Services
Department of Labor and Economic Growth
611 West Ottawa Street, 2rd Floor
P.O. Box 30220
Lansing, MI 48909-7720

E-mail: dkobus@michigan.gov
Phone: (517) 373-0435 or
Toll Free: (877) 999.6442

Sincerely,



Linda A. Watters
Commissioner
Office of Financial and Insurance Services
Department of Labor and Economic Growth.

EXECUTIVE ORDERS
AND
EXECUTIVE REORGANIZATION ORDERS

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

(a) Executive orders and executive reorganization orders."

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 4

ADMINISTRATIVE OVERSIGHT OF CAREER AND TECHNICAL EDUCATION PROGRAMS

DEPARTMENT OF EDUCATION
DEPARTMENT OF LABOR AND ECONOMIC GROWTH

EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, to ensure that our students have the skills and knowledge needed for the jobs of the 21st Century global economy, Michigan recently enacted the Michigan Merit Curriculum, a rigorous new set of statewide graduation requirements for high school students;

WHEREAS, the Department of Education is creating content guidelines for the courses required by the Michigan Merit Curriculum to provide all educators and students with a common understanding of what high school students should know and be able to do at the completion of each required course;

WHEREAS, under Section 1278b of the Revised School Code, 1976 PA 451, MCL 380.1278b, students can meet the Michigan Merit Curriculum requirements by completing "career or technical education courses, industrial technology courses, or vocational education";

WHEREAS, Section 1278b of the Revised School Code, 1976 PA 451, MCL 380.1278b, requires the Department of Education to "[d]evelop and make available material to assist school districts and public school academies" to implement the requirements of the Michigan Merit Curriculum, including developing guidelines for career or technical education courses, industrial technology courses, or vocational education;

WHEREAS, career and technical education programs in secondary schools in Michigan are currently under the administrative oversight of the Office of Career and Technical Preparation within the Department of Labor and Economic Growth and the State Administrative Board;

WHEREAS, transferring the responsibilities of administrative oversight of secondary career and technical education programs to the Department of Education will lead to greater efficiency and accountability, foster greater coordination of educational functions, and result in more consistent programs and policies regarding career and technical training programs in secondary schools;

WHEREAS, federal law requires the State of Michigan to designate a single state board to be responsible for the administration and supervision of career and technical education in Michigan;

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in me by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

A. As used in this Order:

1. "Department of Education" means the principal department of state government created under Section 300 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.400.

2. "Department of Labor and Economic Growth" means the principal department of state government created as the Department of Commerce under Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, renamed the Department of Consumer and Industry Services under Executive Order No. 1996-2, MCL 445.2001, and renamed the Department of Labor and Economic Growth under Executive Order No. 2003-18, MCL 445.2011.

3. "Perkins Act" means the Carl D. Perkins Vocational and Technical Education Act of 1998, as amended by the Carl D. Perkins Career and Technical Education Improvement Act of 2006, Public Law 109-270, 20 USC 2301 to 2414.

4. "State Board of Education" means the board created under Section 3 of Article VIII of the Michigan Constitution of 1963.

5. "Superintendent of Public Instruction" means the principal executive officer of the Department of Education required under Section 3 of Article VIII of the Michigan Constitution of 1963.

6. "Type II transfer" means that type of transfer as defined in Section 3 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. ESTABLISHMENT OF THE STATE BOARD OF EDUCATION AS THE ELIGIBLE AGENCY UNDER THE PERKINS ACT

A. All of the administrative authority, powers, duties, functions, responsibilities, and rule-making authority of the State Administrative Board to administer the Perkins Act previously transferred from the Department of Career Development to the State Administrative Board by Executive Order No. 2000-12, MCL 17.61, are transferred to the State Board of Education.

B. The State Board of Education is designated the "eligible agency" for the supervision and administration of the responsibilities of career and technical education pursuant to the Perkins Act. The State Board of Education is the sole state agency responsible for the administration of career and technical education in Michigan.

C. The responsibilities of the State Board of Education shall include all of the following:

1. Coordination of the development, submission, and implementation of the state plan required by the Perkins Act, and the evaluation of the program, services, and activities assisted under the Perkins Act, including preparation for non-traditional fields.

2. Consultation with the Governor and appropriate agencies, groups, and individuals including parents, students, teachers, teacher and faculty preparation programs, representatives of businesses (including

small businesses), labor organizations, eligible recipients, state and local officials, and local program administrators, involved in the planning, administration, evaluation, and coordination of programs funded under the Perkins Act.

3. Convening and meeting at such time as the State Board of Education determines necessary to carry out its responsibilities under the Perkins Act, but not less than four times annually.

4. The adoption of such procedures as the State Board of Education considers necessary to do any of the following:

a. Implement state level coordination with the activities undertaken by the State of Michigan under Section 121 of the federal Workforce Investment Act of 1998, Public Law 105-228, as amended, 29 USC 2841.

b. Make available to the service delivery system under 29 USC 2841 within Michigan a listing of all school dropout, postsecondary education, and adult programs assisted under this subchapter.

D. The responsibilities of the Department of Labor and Economic Growth under Section 511 of 2006 PA 341 that are required to be vested in the state's "eligible agency" by Section 121 of the Perkins Act, 20 USC 2341, are transferred to the State Board of Education.

III. ADMINISTRATIVE OVERSIGHT OF POSTSECONDARY CAREER AND TECHNICAL EDUCATION

A. The State Board of Education shall delegate to the Department of Labor and Economic Growth all responsibilities regarding postsecondary career and technical education that may be delegated under Section 121(b) of the Perkins Act, 20 USC 2341.

B. Except as provided in Section II, the Department of Labor and Economic Growth shall retain all other administrative authority, powers, duties, functions, responsibilities, and rule-making authority relating to postsecondary career and technical education under state law and federal law.

IV. ADMINISTRATIVE OVERSIGHT OF SECONDARY CAREER AND TECHNICAL EDUCATION

A. All of the authority, powers, duties, functions, responsibilities, and rule-making authority of the Department of Labor and Economic Growth regarding the administration of the state's Career and Technical Education Program for secondary students are transferred by Type II transfer to the Department of Education, including but not limited to the following:

1. All of the authority, powers, duties, functions, responsibilities, and rule-making authority regarding the administration of the Perkins Act for secondary students that were delegated to the Department of Labor and Economic Growth by the State Administrative Board or otherwise remained in the Department of Career Development or the Department of Labor and Economic Growth subsequent to Executive Order 2000-12, MCL 17.61, and Executive Order 2003-18, MCL 445.2011.

2. Any remaining authority, powers, duties, functions, responsibilities, and rule-making authority regarding career and technical education for secondary students under 1919 PA 149, MCL 395.1 to 395.10.

3. Any remaining authority, powers, duties, functions, responsibilities, and rule-making authority regarding career and technical education for secondary students under Section 5 of 1942 (1st Ex Sess) PA 16, MCL 388.805.

4. Any remaining authority, powers, duties, functions, responsibilities, and rule-making authority regarding career and technical education for secondary students under 1964 PA 28, MCL 395.21.

5. Any remaining authority, powers, duties, functions, responsibilities, and rule-making authority regarding career and technical education for secondary students under 1964 PA 44, MCL 395.31 to 395.34.

6. All of the authority, powers, duties, functions, responsibilities, and rule-making authority regarding the designation of service area boundaries for area vocational-technical programs under Section 3 of 1976 PA 451, MCL 380.3.

7. All of the authority, powers, duties, functions, responsibilities, and rule-making authority under the Career and Technical Preparation Act, 2000 PA 258, MCL 388.1901 to 388.1913.

8. All of the authority, powers, duties, functions, responsibilities, and rule-making authority under Section 61a of the School Aid Act of 1979, 1979 PA 94, MCL 388.1661a.

9. All of the authority, powers, duties, functions, responsibilities, and rule-making authority regarding the designation of territory outside of a community college district to become part of an area vocational-technical education program under Section 105(a) of the Community Colleges Act of 1996, 1996 PA 331, MCL 389.105(a).

10. All of the authority, powers, duties, functions, responsibilities, and rule-making authority regarding the designation of vocational schools eligible to receive student loans under Section 2(d) of the Higher Education Loan Authority Act, 1975 PA 222, MCL 390.1152(d).

V. IMPLEMENTATION

A. Nothing in this Order shall be construed to diminish the constitutional authority of the State Board of Education to provide leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, to serve as the general planning and coordinating body for all public education, or to advise the Legislature as to the financial requirements in connection therewith.

B. The Superintendent of Public Instruction, in consultation with the Director of the Department of Labor and Economic Growth, shall provide executive direction and supervision for the implementation of all transfers under this Order.

C. All records, personnel, property, and funds used, held, employed, available or to be made available to the Department of Labor and Economic Growth or the State Administrative Board for the activities transferred to the Department of Education or the State Board of Education under this Order are transferred to the Department of Education.

D. The Superintendent of Public Instruction shall administer the assigned functions transferred by this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

E. The Superintendent of Public Instruction may by written instrument delegate a duty or power conferred by law or this Order and the person to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent the duty or power is delegated by the Superintendent.

VI. MISCELLANEOUS

A. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary to implement this Order.

B. All rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

C. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order, shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

D. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

E. In fulfillment of the requirements under Article V, Section 2, of the Michigan Constitution of 1963, the provisions of this Executive Order are effective July 1, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 1st day of May, 2007.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

_____

Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 5

ABOLISHING THE RONALD WILSON REAGAN MEMORIAL MONUMENT FUND COMMISSION

DEPARTMENT OF MANAGEMENT AND BUDGET EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, the Ronald Wilson Reagan Memorial Monument Fund Commission ("Reagan Commission") was established by the Ronald Wilson Reagan Memorial Monument Fund Commission Act, 2004 PA 489, MCL 399.261 to 399.266, effective December 28, 2004;

WHEREAS, the Reagan Commission was required to initially convene within six months of the first deposit of money in the Ronald Wilson Reagan Memorial Monument Fund ("Fund") created by the Ronald Wilson Reagan Memorial Monument Fund Act, 2004 PA 488, MCL 399.271 to 399.274, but no money has ever been deposited in the Fund and the Reagan Commission has never met;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Reagan Commission will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Management and Budget" means the principal department of state government created under Section 121 of The Management and Budget Act, 1984 PA 431, MCL 18.1121.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Ronald Wilson Reagan Memorial Monument Fund

Commission under the Ronald Wilson Reagan Memorial Monument Fund Commission Act, 2004 PA 489, MCL 399.261 to 399.266, and the Ronald Wilson Reagan Memorial Monument Fund Act, 2004 PA 488, MCL 399.271 to 399.274, are transferred by Type III transfer to the Department of Management and Budget.

B. The Ronald Wilson Reagan Memorial Monument Fund Commission is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Management and Budget shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Management and Budget in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Ronald Wilson Reagan Memorial Monument Fund Commission for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Management and Budget.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

_____

Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 6
ABOLISHING THE TEMPORARY REIMBURSEMENT PROGRAM ADVISORY BOARD
DEPARTMENT OF ENVIRONMENTAL QUALITY
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, the Temporary Reimbursement Program Advisory Board was established by Public Act 322 of 2006 as a temporary entity;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Temporary Reimbursement Program Advisory Board will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Environmental Quality" means the principal department of state government created under Executive Order 1995-18, MCL 324.99903.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Temporary Reimbursement Program Advisory Board created under Section 21562 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.21562, are transferred by Type III transfer to the Department of Environmental Quality.

B. The Temporary Reimbursement Program Advisory Board is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Environmental Quality shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Environmental Quality in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Temporary Reimbursement Program Advisory Board for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Environmental Quality.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

_____

Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 7
ABOLISHING THE MICHIGAN UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE POLICY BOARD

DEPARTMENT OF ENVIRONMENTAL QUALITY
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Michigan Underground Storage Tank Financial Assurance Policy Board will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Environmental Quality" means the principal department of state government created under Executive Order 1995-18, MCL 324.99903.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Michigan Underground Storage Tank Financial Assurance Policy Board created under Section 21541 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.21541, are transferred by Type III transfer to the Department of Environmental Quality.

B. The Michigan Underground Storage Tank Financial Assurance Policy Board is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Environmental Quality shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Environmental Quality in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Michigan Underground Storage Tank Financial Assurance Policy Board for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Environmental Quality.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 8
ABOLISHING THE GROUNDWATER ADVISORY COUNCIL AND THE GROUNDWATER CONSERVATION ADVISORY COUNCIL

DEPARTMENT OF AGRICULTURE
DEPARTMENT OF ENVIRONMENTAL QUALITY

EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Groundwater Advisory Council and the Groundwater Conservation Advisory Council will reduce duplicative government functions and contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Agriculture" means the principal department of state government created under Section 1 of 1921 PA 13, MCL 285.1, and Section 175 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.275.

B. "Department of Environmental Quality" means the principal department of state government created under Executive Order 1995-18, MCL 324.99903.

C. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Groundwater Advisory Council created under Section 8708 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.8708, are transferred by Type III transfer to the Department of Agriculture.

B. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Groundwater Conservation Advisory Council created

under Section 32803 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.32803, are transferred by Type III transfer to the Department of Environmental Quality.

C. The Groundwater Advisory Council is abolished.

D. The Groundwater Conservation Advisory Council is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Environmental Quality and the Director of the Department of Agriculture shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Environmental Quality and the Director of the Department of Agriculture in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Groundwater Advisory Council for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Agriculture.

D. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Groundwater Conservation Advisory Council for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Environmental Quality.

E. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 9
ABOLISHING THE WATER QUALITY MONITORING ADVISORY BOARD

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, abolishing the Water Quality Monitoring Advisory Board created by Governor John M. Engler in 1999 will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

A. The Water Quality Monitoring Advisory Board created by Executive Order 1999-10 is abolished.

B. Executive Order 1999-10 is rescinded in its entirety.

This Order is effective upon filing.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 10
ABOLISHING THE LABORATORY DATA QUALITY ASSURANCE ADVISORY COUNCIL
DEPARTMENT OF ENVIRONMENTAL QUALITY
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Laboratory Data Quality Assurance Advisory Council will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Environmental Quality" means the principal department of state government created under Executive Order 1995-18, MCL 324.99903.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Laboratory Data Quality Assurance Advisory Council created under Section 20517 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.20517, are transferred by Type III transfer to the Department of Environmental Quality.

B. The Laboratory Data Quality Assurance Advisory Council is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Environmental Quality shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Environmental Quality in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Laboratory Data Quality Assurance Advisory Council for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Environmental Quality.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 11
ABOLISHING THE AGRICULTURAL MARKETING AND BARGAINING BOARD
DEPARTMENT OF AGRICULTURE
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Agricultural Marketing and Bargaining Board will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS
As used in this Order:

A. "Department of Agriculture" means the principal department of state government created under Section 1 of 1921 PA 13, MCL 285.1, and Section 175 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.275.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Agricultural Marketing and Bargaining Board created under Section 3 of the Agricultural Marketing and Bargaining Act, 1972 PA 344, MCL 290.703, are transferred by Type III transfer to the Department of Agriculture.

B. The Agricultural Marketing and Bargaining Board is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Agriculture shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Agriculture in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Agricultural Marketing and Bargaining Board for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Agriculture.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 12
ABOLISHING THE VALUE-ADDED AND COMMERCIALIZATION ROUNDTABLE
DEPARTMENT OF AGRICULTURE
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, the advisory Value-Added and Commercialization Roundtable adds little value for taxpayers given that the State of Michigan already has an appointed Commission of Agriculture;

WHEREAS, abolishing the Value-Added and Commercialization Roundtable will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Agriculture" means the principal department of state government created under Section 1 of 1921 PA 13, MCL 285.1, and Section 175 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.275.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Value-Added and Commercialization Roundtable created under Section 302b of the Julian-Stille Value-Added Act, 2000 PA 322, MCL 285.302b, are transferred by Type III transfer to the Department of Agriculture.

B. The Value-Added and Commercialization Roundtable is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Agriculture shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Agriculture in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Value-Added and Commercialization Roundtable for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Agriculture.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 13

ABOLISHING THE AGRICULTURE AND RURAL COMMUNITIES ROUNDTABLE
DEPARTMENT OF ENVIRONMENTAL QUALITY
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, the advisory Agriculture and Rural Communities Roundtable adds little value for taxpayers given that the State of Michigan already has an appointed Commission of Agriculture and Commission on Natural Resources;

WHEREAS, abolishing the Agriculture and Rural Communities Roundtable will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Environmental Quality" means the principal department of state government created under Executive Order 1995-18, MCL 324.99903.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Agriculture and Rural Communities Roundtable convened under Section 2305 of the Natural Resources and Environmental Protection Act, 1994, PA 451, MCL 324.2305, are transferred by Type III transfer to the Director of the Department of Environmental Quality.

B. The Agriculture and Rural Communities Roundtable is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Environmental Quality shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Environmental Quality in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Agriculture and Rural Communities Roundtable for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Director of the Department of Environmental Quality.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 14
ABOLISHING THE INVASIVE SPECIES ADVISORY COUNCIL
DEPARTMENT OF NATURAL RESOURCES
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Invasive Species Advisory Council will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Natural Resources" means the principal department of state government created under Section 250 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.350, and Section 501 of the Natural Resources and Environmental Protection Act, 1965 PA 380, MCL 324.501, as modified by Executive Order 1995-18, MCL 324.99903.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Invasive Species Advisory Council created under Section 41321 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.41321, are transferred by Type III transfer to the Department of Natural Resources.

B. The Invasive Species Advisory Council is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Department of Natural Resources may consult with the Department of Agriculture and the Department of Environmental Quality when performing the power, duties, and functions transferred under this Order.

B. The Director of the Department of Natural Resources shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

C. The functions transferred under this Order shall be administered by the Director of the Department of Natural Resources in such ways as to promote efficient administration.

D. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Invasive Species Advisory Council for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Natural Resources.

E. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 15
ABOLISHING THE HIGHWAY RECIPROCITY BOARD
DEPARTMENT OF STATE
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Highway Reciprocity Board will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of State" means the principal department of state government created under Section 25 of the Executive Organization Act of 1965, MCL 16.125.

B. "Highway Reciprocity Board" means the board created under 1960 PA 124 and transferred by Type II transfer to the Department of State under Section 31 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.131.

C. "Type II transfer" means that term as defined under Section 3(b) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

D. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Highway Reciprocity Board, are transferred by Type III transfer to the Department of State.

B. The Highway Reciprocity Board is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Secretary of State shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Secretary of State in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Highway Reciprocity Board for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of State.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 16

ABOLISHING THE COMMUNITY HEALTH ADVISORY COUNCIL

DEPARTMENT OF COMMUNITY HEALTH
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Community Health Advisory Council created by Governor John M. Engler in 1997 will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Community Health" means the principal department of state government created as the Department of Mental Health under Section 400 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.500, and renamed the "Department of Community Health" under Executive Order 1996-1, MCL 330.3101.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Community Health Advisory Council created under Section IV of Executive Order 1997-4, MCL 333.26324, are transferred by Type III transfer to the Department of Community Health.

B. The Community Health Advisory Council is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Community Health shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Community Health in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Community Health Advisory Council for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Community Health.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 17
ABOLISHING THE HEALTH PLANS ADVISORY COUNCIL

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, abolishing the Health Plans Advisory Council created by the Department of Community Health in 1997 will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

A. The Health Plans Advisory Council created within the Department of Community Health in 1997 is abolished.

This order is effective upon filing.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 18
MICHIGAN CITIZEN-COMMUNITY EMERGENCY RESPONSE COORDINATING COUNCIL

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, under Section 8 of Article V of the Michigan Constitution of 1963 the Governor is responsible for taking care that the laws be faithfully executed;

WHEREAS, under Section 8 of Article V of the Michigan Constitution of 1963 each principal department of state government is under the supervision of the Governor unless otherwise provided by the Constitution;

WHEREAS, this administration continues to be committed to encouraging all residents, organizations, and institutions in Michigan to help in solving our most critical problems by volunteering their time, effort, energy and service in times of prosperity as well as crisis;

WHEREAS, the need for homeland security, community health, public safety, and all-hazard preparedness have increased and have led to the need to call upon the compassion, inventiveness, and volunteer spirit of all Michigan residents to help solve many of the problems facing our communities;

WHEREAS, state government has a unique role to play in coordinating hazard mitigation and emergency response activities of state and local governments;

WHEREAS, it is appropriate that state government rely upon appropriate technical expertise and input from the general public in coordinating hazard mitigation and emergency response activities;

WHEREAS, the Michigan Citizen Corps Council was created within the Michigan Community Service Commission under Executive Order 2002-9 to oversee the development and operation of the Michigan Citizen Corps Council and to act as a state-wide advisory council on the Michigan Citizen Corps;

WHEREAS, while under Executive Order 2002-9, the Michigan Citizen Corps Council was charged with the development of initiatives to promote, among other things, the federal Terrorist Information and Prevention System (TIPS), federal law now prohibits activities to implement the TIPS component of the Citizen Corps initiative;

WHEREAS, the Michigan Citizen Corps Council failed to report to the Governor and the Legislature as required under Executive Order 2002-9;

WHEREAS, the Michigan Emergency Planning and Community Right-to-Know Commission was established by Executive Order 1994-17, as amended by Executive Orders 1994-25 and 1995-23, and designated as the emergency response commission for this state as required by the federal Emergency Planning and Community Right-to-Know Act of 1986;

WHEREAS, the Michigan Hazard Mitigation Coordinating Council was established by Executive Order 1998-5 to assist in preventing or lessening the damage and impact of disasters and emergencies through hazard mitigation;

WHEREAS, the work of the Michigan Citizen Corps Council, the Michigan Emergency Planning and Community Right-to-Know Commission, and the Michigan Hazard Mitigation Coordinating Council can be coordinated more effectively by a single new entity within the Department of State Police;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in me by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

A. "Civil Service Commission" means the commission authorized under Section 5 of Article XI of the Michigan Constitution of 1963.

B. "Council" means the Michigan Citizen-Community Emergency Response Coordinating Council created as an advisory body within the Department of State Police under this Order.

C. "Community Service Commission" means the Michigan Community Service Commission established under 1994 PA 219, MCL 408.221 to 408.232, that was subsequently transferred to the Department of Career Development by Executive Order 1999-1, as amended, MCL 408.40, to the Department of Labor and Economic Growth by Executive Order 2003-18, MCL 445.2011, and to the Department of Human Services by Executive Order 2006-18, MCL 400.561.

D. "Department of Management and Budget" means the principal department of state government created under Section 121 of The Management and Budget Act, 1984 PA 431, MCL 18.1121.

E. "Department of State Police" or "Department" means the Department of State Police created under Section 150 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.250.

F. "Michigan Citizen Corps" means the Michigan initiative created under the federal USA Freedom Corps program pursuant to Executive Order 2002-9 and other applicable state and federal law.

G. "Michigan Citizen Corps Council" means the advisory body created within the Michigan Community Service Commission under Executive Order 2002-9.

H. "Michigan Emergency Planning and Community Right-to-Know Commission" means the advisory body created within the Department of State Police under Executive Order 1994-17, as amended by Executive Orders 1994-25 and 1995-23.

I. "Michigan Hazard Mitigation Coordinating Council" means the advisory body established within the Department of State Police by Executive Order 1998-5.

J. "USA Freedom Corps" means the federal interagency initiative created under Executive Order No. 13254, 67 CFR 4869, and any successor program.

II. CREATION OF THE COUNCIL

A. The Michigan Citizen-Community Emergency Response Coordinating Council is created as an advisory body within the Department of State Police.

B. The Council shall consist of the following members:

1. The Director of the Department of Agriculture or his or her designated representative from within the Department of Agriculture.

2. The Director of the Department of Community Health or his or her designated representative from within the Department of Community Health.

3. The Director of the Department of Environmental Quality or his or her designated representative from within the Department of Environmental Quality.

4. The Adjutant General or his or her designated representative from within the Department of Military and Veterans Affairs.

5. The Director of the Department of State Police or his or her designated representative from within the Department.

6. The Director of the Department of Transportation or his or her designated representative from within the Department of Transportation.

7. The State Fire Marshal.

8. The Executive Director of the Community Service Commission or his or her designee from within the Community Service Commission.

9. Eleven individuals appointed by the Governor, including at least two individuals with technical expertise related to emergency response.

10. Of the 11 members initially appointed by the Governor under Section II.B.9, 3 members shall be appointed for terms expiring on December 31, 2007, 3 members shall be appointed for terms expiring on December 31, 2008, 3 members shall be appointed for terms expiring on December 31, 2009, and 2 members shall be appointed for terms expiring on December 31, 2010. After the initial terms, members of the Council shall be appointed to 4-year terms.

C. A vacancy on the Council occurring other than by expiration of a term shall be filled in the same manner as the original appointment for the balance of the unexpired term.

D. The Governor shall designate a member of the Council to serve as its Chairperson at the pleasure of the Governor. The Governor may designate a member of the Council to serve as its Vice-Chairperson at the pleasure of the Governor.

III. CHARGE TO THE COUNCIL

A. The Council shall act in an advisory capacity to the Department of State Police and shall do all of the following:

1. Monitor and advise the Department regarding the development and operation of the Michigan Citizen Corps.

2. Act as the statewide advisory council for the Michigan Citizen Corps.

3. Develop for presentation to the Department a comprehensive Michigan Community Emergency Response and Citizen Corps Coordination Plan ("Plan") in consultation with the Department of State Police, the Department of Community Health, the Department of Environmental Quality, the

Department of Military and Veterans Affairs, the Office of the State Fire Marshal, and other emergency management entities, including local and tribal entities. The Plan shall provide for all of the following:

a. Coordination of the use of volunteer resources in Michigan in furtherance of homeland security and emergency response.

b. Description of volunteer recruitment and plans for volunteer-management related to emergencies in times of declared states of emergency or disaster.

c. Analysis of state agency coordination plans related to volunteer recruitment and emergency management.

d. Detail of state, local, and tribal activities that may help in the further development of the Michigan Citizen Corps and coordination of citizen-based community emergency response efforts.

e. Reporting on best practices in local and tribal citizen-based emergency response activities and recognizing accomplishments.

4. Beginning September 30, 2009, annually update and submit the Plan required under Section III.C.3 to the Director of the Department of State Police and the Executive Director of the Michigan Community Service Commission no later than 60 days after the close of each fiscal year.

5. Identify opportunities for local, state, tribal, and federal organizations to collaborate to accomplish the shared goals of Citizen Corps and other citizen-based community emergency response efforts.

6. Assist and advise the Department of State Police, the Community Service Commission and local and tribal entities with the preparation of grant and other funding applications submitted to the USA Freedom Corps and other public and private funding sources for implementing the Michigan Citizen Corps and other citizen-based community emergency response efforts.

7. Assist and advise the Department of State Police and the Community Service Commission with the establishment of policies and procedures regarding the use of grants and other funds related to the USA Freedom Corps, the Michigan Citizen Corps, and other citizen-based community emergency response efforts, subject to appropriations and applicable law.

8. Assist and advise the Department of State Police and the Community Service Commission with the development, establishment, and promotion of local Citizen Corps councils, local Citizen Corps programs, and other citizen-based community emergency response and homeland security initiatives.

9. Assist and advise the Department of State Police and the Community Service Commission in the development of programs and activities to promote community service related to homeland security and citizen-based community emergency response, including, but not limited to: Volunteers in Police Service, Neighborhood Watch, Medical Reserve Corps, and Community Emergency Response Teams.

10. Assist and advise the Department of State Police and the Community Service Commission regarding public education, training, and volunteer opportunities related to homeland security and citizen-based community emergency response.

11. Recommend policies and procedures to ensure that emergency response volunteers are connected to emergency alert systems.

12. Recommend policies and procedures to be used by the Michigan Citizen Corps and local Citizen Corps programs in responding to requests for volunteer assistance from other states.

13. Coordinate on behalf of the Department of State Police or the Community Service Commission activities relating to reports to the federal government regarding Citizen Corps and other related activity in Michigan.

B. The Council is designated as the state emergency response commission required under Section 301 of the federal Emergency Planning and Community Right-to-Know Act, Title III of the Superfund Amendments and Reauthorization Act of 1986, 42 USC 11001 to 11050 ("Act") and shall perform all of the duties of a state emergency response commission under the Act, including, but not limited to, all of the following:

1. Appointing local emergency planning committees for each county of this state. Each local emergency planning committee shall include, at a minimum, representatives from each of the following groups or organizations: elected state and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of Subchapter I of the Act, 42 USC 11001 to 11005. Each local emergency planning committee shall appoint a chairperson and establish rules for the functioning of the committee, with the rules including provisions for public notification of committee activities, public meetings to discuss emergency plans, public comments, response to such comments by the committee, and distribution of emergency plans. Local emergency planning committees shall comply with the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, and the Open Meetings Act, 1976 PA 267, MCL 15.261 to 15.275. Each local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under Section 324 of the Act, 42 USC 11044, including tier II information under Section 312 of the Act, 42 USC 11022, and procedures for the designation of an official to serve as coordinator for the information. Each local emergency planning committee shall perform the functions required of local emergency planning committees under the Act.

2. Notifying the Administrator of the federal Environmental Protection Agency of facilities subject to the requirements of the Act and of each notification received from a facility under Section 302(c) of the Act, 42 USC 11002(c).

3. Reviewing plans submitted by local emergency planning committees and make recommendations to the committees on revisions that may be necessary to ensure coordination with other emergency planning districts.

4. Protecting the public health, safety, welfare, and the environment by facilitating the implementation of the emergency planning and community right-to-know provisions of the Act.

5. Evaluating state agency responsibilities regarding hazardous materials planning, enforcement, and response, and develop recommendations to ensure efficient and effective coordination of hazardous materials planning, enforcement, and response.

C. The Council shall perform the following functions relating to hazard mitigation planning and coordination:

1. Assisting in the development, maintenance, and implementation of a state hazard mitigation plan.

2. Assisting in the development, maintenance, and implementation of guidance and informational materials to support hazard mitigation efforts of local and state government, and private entities.

3. Soliciting, reviewing, and identifying hazard mitigation projects for funding, including, but not limited to, federal funding under Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5170c, and Sections 553 and 554 of the National Flood Insurance Reform Act of 1994, 42 USC 4104c and 42 USC 4014d.

4. Fostering and promoting, where appropriate, hazard mitigation principles and practices within local and state government, and with the general public.

IV. OPERATIONS OF THE COUNCIL

A. The Council shall be staffed by personnel from and assisted by the Department of State Police. Any budgeting, procurement, and related management functions of the Council shall be performed under the direction and supervision of the Director of the Department of State Police.

B. The Council shall select from among its members a Secretary. Council staff shall assist the Secretary with recordkeeping responsibilities.

C. Members of the Council appointed by the Governor under Section II.B.9 shall not delegate their responsibilities as members to other persons. A majority of the members of the Council serving constitutes a quorum for the transaction of the Council's business. The Council shall act by a majority vote of its serving members.

D. The Council shall adopt procedures consistent with Michigan law and this Order governing its organization and operations and may establish committees and request public participation on advisory panels as the Council deems necessary. The Council may also adopt, reject, or modify any recommendations proposed by committees or advisory panels.

E. The Council shall meet at the call of the Chairperson and as may be provided in procedures adopted by the Council.

F. In developing recommendations, the Council may, as appropriate, make inquiries, studies, investigations, hold hearings, and receive comments from the public. The Council may also consult with outside experts in order to perform its duties, including, but not limited to, experts in the private sector, organized labor, government agencies, and at institutions of higher education.

G. Members of the Council shall serve without compensation but may receive reimbursement for necessary travel and expenses according to relevant statutes and the rules of procedures of the Civil Service Commission and the Department of Management and Budget, subject to available appropriations.

H. The Council may hire or retain contractors, sub-contractors, advisors, consultants, and agents, and may make and enter into contracts necessary or incidental to the exercise of the powers of the Council and the performance of its duties as the Chairperson deems advisable and necessary, in accordance with this Order, and the relevant statutes, rules, and procedures of the Civil Service Commission and the Department of Management and Budget.

I. The Council may accept donations of labor, services, or other things of value from any public or private agency or person. Any donations shall be expended in accordance with applicable laws, rules, and procedures.

J. Members of the Council shall refer all legal, legislative, and media contacts to the Department of State Police.

V. RESCISSIONS

A. The Michigan Citizen Corps Council created under Executive Order 2002-9 is abolished.

B. Executive Order 2002-9 is rescinded in its entirety.

C. The Michigan Hazard Mitigation Coordinating Council created under Executive Order 1998-5 is abolished.

D. Executive Order 1998-5 is rescinded in its entirety.

E. The State Emergency Planning and Community Right-to-Know Commission established under Executive Order 1994-17, as amended by Executive Orders 1994-25 and 1995-23, is abolished.

F. Executive Orders 1987-5, 1988-1, 1994-17, 1994-25, and 1995-23 are rescinded in their entirety.

VI. MISCELLANEOUS

A. All departments, committees, commissioners, or officers of this state or of any political subdivision of this state shall give to the Council, or to any member or representative of the Council, any necessary assistance required by the Council, or any member or representative of the Council, in the performance of the duties of the Council so far as is compatible with its, his, or her duties. Free access also shall be given to any books, records, or documents in its, his, or her custody, relating to matters within the scope of inquiry, study, or investigation of the Council.

B. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order.

This Order is effective upon filing.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 19
ABOLISHING THE COMMUNITY HEALTH SPECIALTY SERVICES PANEL
DEPARTMENT OF COMMUNITY HEALTH
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Specialty Services Panel provided for within the Department of Community Health under Public Act 409 of 2000 will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Community Health" means the principal department of state government created as the Department of Mental Health under Section 400 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.500, and renamed the "Department of Community Health" under Executive Order 1996-1, MCL 330.3101

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Specialty Services Panel provided for within the Department of Community Health under Section 109g of The Social Welfare Act, 1939 PA 280, MCL 400.109g, are transferred by Type III transfer to the Department of Community Health.

B. The Specialty Services Panel is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Community Health shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Community Health in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Specialty Services Panel for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Community Health.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 20
ABOLISHING THE RETAIL FOOD ADVISORY BOARD

DEPARTMENT OF AGRICULTURE
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Retail Food Advisory Board will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Agriculture" means the principal department of state government created under Section 1 of 1921 PA 13, MCL 285.1, and Section 175 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.275.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Retail Food Advisory Board created under Section 2103 of the Food Law of 2000, 2000 PA 92, MCL 289.2103, are transferred by Type III transfer to the Department of Agriculture.

B. The Retail Food Advisory Board is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Agriculture shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Agriculture in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Retail Food Advisory Board for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Agriculture.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 21
ABOLISHING THE MICHIGAN ENVIRONMENTAL SCIENCE BOARD
DEPARTMENT OF ENVIRONMENTAL QUALITY
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the advisory Michigan Environmental Science Board will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Environmental Quality" means the principal department of state government created under Executive Order 1995-18, MCL 324.99903.

B. "Michigan Environmental Science Board" means the board established within the Department of Management and Budget by Executive Order 1991-33 and transferred to the Department of Environmental Quality by Executive Order 1997-3, MCL 324.99904.

C. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Michigan Environmental Science Board are transferred by Type III transfer to the Department of Environmental Quality.

B. The Michigan Environmental Science Board is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Environmental Quality shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Environmental Quality in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Michigan Environmental Science Board for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Environmental Quality.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 22
ABOLISHING THE PERSONNEL AGENCY BOARD
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Personnel Agency Board will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Labor and Economic Growth" means the principal department of state government created by section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, and renamed by Executive Order No. 1996-2, MCL 445.2001, and by Executive Order No. 2003-18, MCL 445.2011.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Personnel Agency Board created under Section 1002 of the Occupational Code, 1980 PA 299, MCL 339.1002, are transferred by Type III transfer to the Department of Labor and Economic Growth.

B. The Personnel Agency Board is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Labor and Economic Growth shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Labor and Economic Growth in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Personnel Agency Board for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Labor and Economic Growth.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 23
ABOLISHING THE BOARD OF LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Board of Landscape Architects will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department of Labor and Economic Growth" means the principal department of state government created by section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, and renamed by Executive Order No. 1996-2, MCL 445.2001, and by Executive Order No. 2003-18, MCL 445.2011.

B. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Board of Landscape Architects created under Section 2203 of the Occupational Code, 1980 PA 299, MCL 339.2203, are transferred by Type III transfer to the Department of Labor and Economic Growth.

B. The Board of Landscape Architects is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Labor and Economic Growth shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Labor and Economic Growth in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Board of Landscape Architects for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Labor and Economic Growth.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 24
ABOLISHING THE STATE BOARD OF FORENSIC POLYGRAPH EXAMINERS
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the State Board of Forensic Polygraph Examiners will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "State Board of Forensic Polygraph Examiners" means the board created within the Department of State Police under Section 5 of the Forensic Polygraph Examiners Act, 1972 PA 295, MCL 338.1701 to 338.1729, and transferred to the Department of Commerce under Executive Order 1991-9, MCL 338.3501.

B. Department of Labor and Economic Growth" means the principal department of state government created by section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, and renamed by Executive Order No. 1996-2, MCL 445.2001, and by Executive Order No. 2003-18, MCL 445.2011.

C. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the State Board of Forensic Polygraph Examiners are transferred by Type III transfer to the Department of Labor and Economic Growth.

B. The State Board of Forensic Polygraph Examiners is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Labor and Economic Growth shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Labor and Economic Growth in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the State Board of Forensic Polygraph Examiners for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Labor and Economic Growth.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 25
ABOLISHING THE STATE SCHOOL DISTRICT ACCOUNTABILITY BOARD
DEPARTMENT OF EDUCATION
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, Section 3 of Article VIII of the Michigan Constitution of 1963 vests leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, in an elected State Board of Education;

WHEREAS, 1999 PA 10 removed the elected school board for the Detroit Public School District and replaced the board with an appointed board consisting of six appointees and the State Superintendent of Public Instruction;

WHEREAS, 1999 PA 10 also created within the Department of Education a School District Accountability Board consisting of the State Superintendent of Public Instruction, the State Treasurer, the State Budget Director, and two persons appointed by Governor John M. Engler to review district improvement plans submitted by the appointed school board and monitor any progress being made in achieving goals and benchmarks under the plan;

WHEREAS, under 1999 PA 10, the powers of the School District Accountability Board were limited to a qualifying school district in which an appointed school reform board is in place, such as the board appointed for the Detroit Public School District in 1999;

WHEREAS, the takeover of the Detroit Public School District by an appointed board mandated under 1999 PA 10 was a failure, resulting in a $198 million deficit during Fiscal Year 2005;

WHEREAS, 2003 PA 303 amended 1990 PA 10 to end the state takeover of the Detroit Public School District, allowing Detroit voters, rather than Lansing lawmakers, to determine the powers of the Detroit School Board and what is best for their schools and their children;

WHEREAS, when given a choice, Detroit voters chose to govern their school district by an elected board in the same manner as other districts throughout this state, and the elected board they selected is now in place;

WHEREAS, return to an elected school board for Detroit Public Schools eliminates the need for a special School District Accountability Board to provide state oversight of an appointed board for the Detroit Public School District;

WHEREAS, the functions of the School District Accountability Board are best vested in elected officials directly accountable to the public;

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to change the organization of the executive branch of state government;

NOW THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in me by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Department" means the Department of Education, a principal department of state government created under Section 300 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.400.

B. "School District Accountability Board" means the board created within the Department under Section 376 of The Revised School Code, MCL 380.376, consisting of the Superintendent of Public Instruction, the State Treasurer, the State Budget Director, and gubernatorial appointees.

C. "State Board of Education" means the elected State Board of Education created under Section 3 of Article VIII of the Michigan Constitution of 1963.

D. "Superintendent of Public Instruction" means the principal executive officer of the Department appointed by the State Board of Education as provided under Section 3 of Article VIII of the Michigan Constitution of 1963.

II. ABOLISHMENT OF THE SCHOOL DISTRICT ACCOUNTABILITY BOARD FOR THE DETROIT PUBLIC SCHOOL DISTRICT

A. All of the authority, powers, duties, functions, responsibilities, rule-making authority, records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the School District Accountability Board are transferred to the elected State Board of Education.

B. The School District Accountability Board is abolished.

III. IMPLEMENTATION

A. The Superintendent of Public Instruction shall immediately initiate coordination to facilitate the implementation of the transfers under this Order.

B. The Superintendent of Public Instruction shall provide executive direction and supervision for the implementation of all transfers to the State Board of Education under this Order. The functions transferred to the State Board of Education under this Order shall be administered under the direction and supervision of the State Board of Education, including, but not limited to, any prescribed functions of rule-making, licensing, registration, and the prescription of rules, regulations, standards, and adjudications.

C. All records, personnel, property, and funds used, held, employed, or to be made available to the School District Accountability Board for the activities transferred to the State Board of Education under this Order are transferred to the State Board of Education.

D. The Superintendent of Public Instruction and the Chairperson of the School District Accountability Board shall develop a memorandum of record identifying any pending settlements, issues of compliance with any applicable state or federal laws or regulations, or other obligations to be resolved by the School District Accountability Board.

E. The State Board of Education shall administer the assigned functions transferred under this Order in such ways as to promote efficient administration and the Superintendent of Public Instruction shall make organizational changes within the Department as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

F. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary to implement this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand and seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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SECRETARY OF STATE

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 26
ABOLISHING THE TASK FORCE ON LOCAL GOVERNMENT SERVICES AND FISCAL STABILITY

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, the Task Force on Local Government Services and Fiscal Stability has completed the work for which it was created;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

A. The Task Force on Local Government Services and Fiscal Stability created by Executive Order 2005-9 is abolished.

B. Executive Order 2005-9 is rescinded in its entirety.

The provisions of this Order are effective upon filing.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 27
ABOLISHING THE COMMISSION ON HIGHER EDUCATION AND ECONOMIC GROWTH IN MACOMB COUNTY

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, the Commission on Higher Education and Economic Growth in Macomb County has completed the work for which it was created;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

A. The Commission on Higher Education and Economic Growth in Macomb County created by Executive Order 2006-11 is abolished.

B. Executive Orders 2006-11 and 2006-22 are rescinded in their entirety.

The provisions of this Order are effective upon filing.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 28
ABOLISHING THE MICHIGAN TASK FORCE ON ELDER ABUSE

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, the Michigan Task Force on Elder Abuse has completed the work for which it was created;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

A. The Michigan Task Force on Elder Abuse created by Executive Order 2005-11 is abolished.

B. Executive Orders 2005-11 and 2005-15 are rescinded in their entirety.

The provisions of this Order are effective upon filing.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

EXECUTIVE ORDERS

EXECUTIVE ORDER No.2007 – 29
ABOLISHING THE ADVISORY COMMITTEE ON SEPTAGE WASTE STORAGE FACILITY MANAGEMENT PRACTICES

DEPARTMENT OF ENVIRONMENTAL QUALITY
EXECUTIVE REORGANIZATION

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that the Governor considers necessary for efficient administration;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

WHEREAS, abolishing the Advisory Committee on Septage Waste Storage Facility Management Practices provided for under Section 11715d of the Natural Resources and Protection Act, 1994 PA 451, MCL 324.11715d, will contribute to a smaller and more efficient state government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Advisory Committee on Septage Waste Storage Facility Management Practices" means the committee convened under Section 11715d of the Natural Resources and Protection Act, 1994 PA 451, MCL 324.11715d, to make recommendations on septage waste storage facility management practices, including, but not limited to, storage facility inspections.

B. "Department of Environmental Quality" means the principal department of state government created under Executive Order 1995-18, MCL 324.99903.

C. "Type III transfer" means that term as defined under Section 3(c) of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.103.

II. TRANSFER OF AUTHORITY

A. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Advisory Committee on Septage Waste Storage Facility Management Practices are transferred by Type III transfer to the Department of Environmental Quality.

B. The Advisory Committee on Septage Waste Storage Facility Management Practices is abolished.

III. IMPLEMENTATION OF TRANSFERS

A. The Director of the Department of Environmental Quality shall provide executive direction and supervision for the implementation of all transfers of functions under this Order and shall make internal organizational changes as necessary to complete the transfers under this Order.

B. The functions transferred under this Order shall be administered by the Director of the Department of Environmental Quality in such ways as to promote efficient administration.

C. All records, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Advisory Committee on Septage Waste Storage Facility Management Practices for the activities, powers, duties, functions, and responsibilities transferred under this Order are transferred to the Department of Environmental Quality.

D. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

IV. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective July 15, 2007 at 12:01 a.m.

Given under my hand and the Great Seal of the State of Michigan this 2nd day of May, in the year of our Lord, two thousand seven.

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JENNIFER M. GRANHOLM
GOVERNOR

BY THE GOVERNOR:

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Secretary of State

OPINIONS OF THE ATTORNEY GENERAL

MCL 14.32 states in part:

"It shall be the duty of the attorney general, when required, to give his opinion upon all questions of law submitted to him by the legislature, or by either branch thereof, or by the governor, auditor general, treasurer or any other state officer"

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(j) Attorney general opinions. "

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

MUNICIPALITIES: Determining life-cycle costs of pavement used in highway projects

DEPARTMENT OF TRANSPORTATION:

HIGHWAYS AND ROADS:

Under MCL 247.651h(1), the Michigan Department of Transportation is required to design and award certain paving projects "utilizing material having the lowest life-cycle cost." A municipality may not alter the selection of the material to be used on a state highway project by paying the difference between the cost of the material having the lowest life-cycle cost and the more expensive material desired by the municipality.

Opinion No. 7194 May 16, 2006

Honorable Raymond Basham
State Senator
The Capitol
Lansing, MI

You have asked whether a municipality may select the type of pavement to be used on a state highway project by paying the difference between the cost of the pavement material having the lowest life-cycle cost and the more expensive material desired by the municipality.[1]

Subsection 1h(1) of 1951 PA 51, MCL 247.651h(1), sets out the requirement for the Michigan Department of Transportation (MDOT) to perform a life-cycle cost analysis;[1] it pertains to highway projects for which paving costs exceed $1,000,000 that are funded, at least in part, with state funds:[2]

[1] It is assumed that the contributions to which you refer are voluntary and in addition to the statutorily required contributions. Under MCL 247.651c, an incorporated city or village is required to contribute toward the cost of certain state trunk line highway projects.

> The department shall develop and implement a life-cycle cost analysis for each project for which total pavement costs exceed $1,000,000.00 funded in whole, or in part, with state funds. *The department shall design and award paving projects utilizing material having the lowest life-cycle cost.* All pavement design life shall ensure that state funds are utilized as efficiently as possible. [Emphasis added.]

You direct attention to the last sentence of subsection (1) requiring pavement design life to ensure that "state funds" are utilized as efficiently as possible and ask if, by using local funds to pay the extra cost, a different pavement material could be selected for the project.

Your question requires the interpretation and application of the words of the statute. In *Roberts v Mecosta County General Hospital*, 466 Mich 57, 63; 642 NW2d 663 (2002), the Court explained the governing principles of law:

> An anchoring rule of jurisprudence, and the foremost rule of statutory construction, is that courts are to effect the intent of the Legislature. To do so, we begin with an examination of the language of the statute. If the statute's language is clear and unambiguous, then we assume that the Legislature intended its plain meaning and the statute is enforced as written. A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. [Citations omitted.]

MCL 247.651h(1) states the requirement in plain and unambiguous terms: "The department *shall* design and award paving projects utilizing material having the lowest life-cycle cost." (Emphasis added.) The Legislature's use of the word "shall" makes the requirement mandatory.[3] The language of the statute allows no exception to that requirement. As the Michigan Supreme Court ruled in *Roberts*, "a court may read nothing into an unambiguous statute that is not within the manifest intent of the

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[1] MDOT advises that it has developed formulae for making life-cycle cost analyses, but the details of those formulae need not be addressed in this opinion.

[2] MCL 247.651i sets out a limited exception for up to four demonstration projects each year. Except to emphasize the mandatory nature of the life-cycle cost requirements, the exception is not relevant to your question.

[3] See *Roberts*, 466 Mich at 65: "The phrases 'shall' and 'shall not' are unambiguous and denote a mandatory, rather than discretionary action."

Legislature as derived from the words of the statute itself." The plain language of the statute must be enforced as written.

In addition, subsection 1h(2), MCL 247.651h(2), addresses what must be included within the life-cycle cost analysis:

> As used in this section, *"life-cycle cost" means the total of the cost of the initial project plus all anticipated costs for subsequent maintenance, repair, or resurfacing over the life of the pavement.* Life-cycle cost shall also compare equivalent designs and shall be based upon Michigan's actual historic project maintenance, repair, and resurfacing schedules and costs as recorded by the pavement management system, *and shall include estimates of user costs throughout the entire pavement life.* [MCL 247.651h(2); emphasis added.]

MCL 247.651h(2) is clear and unambiguous with regard to which costs of the highway project must be included in the life-cycle cost analysis – the "total of the cost of the initial project plus all anticipated costs for subsequent maintenance, repair, or resurfacing over the life of the pavement" including "estimates of user costs throughout the entire pavement life."[1] Even though the Legislature required a life-cycle cost analysis for projects funded only in part with state funds, it required that all of the described costs be included.[2] The statute does not allow the federally or locally funded portion of project costs to be excluded from the life-cycle cost analysis. An offer by a municipality to voluntarily offset a portion of the costs with its own local funds would not alter the requirement to include all of the costs in the life-cycle cost analysis.[3]

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[1] Used as a noun, as here, the word "total" means: "a product of addition: SUM . . . an entire quantity: AMOUNT." The word "all" means "the whole number, quantity, or amount: TOTALITY." *Merriam-Webster's Collegiate Dictionary*, *11th Edition* (2004).

[2] The cost of a project often includes local funds provided under MCL 247.651c and federal funds. During fiscal year 2005-2006, for example, $1,147,342,100 in federal funds were appropriated for highway construction, planning, and research. See section 101 of 2005 PA 158.

[3] OAG, 1999-2000, No 7051, p 116, 117 (April 5, 2000), observed that the selection of the pavement type is necessarily governed by the life-cycle cost analysis: "Because pavement type depends on the material used, the results of the life-cycle cost analysis are used to select pavement type."

The language in subsection 1h(1) that "pavement design life shall ensure that state funds are utilized as efficiently as possible" expresses a purpose to be served by the life-cycle analysis; those words do not negate the express requirement to include all of the costs in that analysis. Where a statute contains a general provision ("ensure that state funds are used as efficiently as possible") and specific provisions ("award paving projects utilizing material having the lowest life-cycle cost" and requiring that all of the described costs be included in the life-cycle cost analysis), the specific provisions control.[1]

It is my opinion, therefore, that under MCL 247.651h(1), the Michigan Department of Transportation is required to design and award certain paving projects "utilizing material having the lowest life-cycle cost." A municipality may not alter the selection of the material to be used on a state highway project by paying the difference between the cost of the material having the lowest life-cycle cost and the more expensive material desired by the municipality.

MIKE COX
Attorney General

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[1] *Gebhardt v O'Rourke*, 444 Mich 535, 542-543; 510 NW2d 900 (1994) (citation omitted).

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

CONST 1963, ART 9, § 19: Application of the exemption from the prohibition against stock ownership under
CONSTITUTIONAL LAW: Const 1963, art 9, § 19.

INVESTMENTS:

MICHIGAN STRATEGIC FUND:

Const 1963, art 9, § 19 allows the State to invest funds held as permanent funds or endowment funds – including, but not limited to, the three funds listed in Ballot Proposal 02-2 – in the stock of a company as provided by law.

An act of the Legislature giving a fund the title "permanent fund" is not, by itself, sufficient to qualify the fund for the stock ownership exemption under Const 1963, art 9, § 19. A fund so designated must also possess the substantive characteristics of a "permanent fund" as that term is used in the Constitution.

Sections 88e, 88f, 88g, and 88h of 2005 PA 225, MCL 125.2088e – 125.2088(h), which require the Michigan Strategic Fund to create and operate various investment programs and create the Jobs for Michigan Investment Fund as a permanent fund, are constitutional under Const 1963, art 9, § 19.

Opinion No. 7195 July 19, 2006

Honorable Leon Drolet
State Representative
The Capitol
Lansing, MI

Honorable Jack Brandenburg
State Representative
The Capitol
Lansing, MI

You have asked three questions concerning the constitutional prohibition against the State's investments in stock. Your questions may be stated as follows:

> 1. Does Const 1963, art 9, § 19, allow any permanent fund that was not specifically listed in Proposal 02-2 – the ballot proposal to extend the exemption from the prohibition against stock ownership to other permanent and endowment funds – to invest in stock?

2. Whether a legislative act giving a fund the title "permanent fund" is sufficient to qualify the fund for the stock ownership exemption under Const 1963, art 9, § 19?

3. Whether sections 88e, 88f, 88g, and 88h of 2005 PA 225, which required the Michigan Strategic Fund to create and operate investment programs and created a new permanent fund, the Jobs for Michigan Investment Fund, violate the prohibition against State stock ownership in Const 1963, art 9, § 19?

You first ask whether Const 1963, art 9, § 19 allows any permanent fund to invest in the stock of a company.

Michigan has a long history of prohibiting the State from investing in the stock of companies or corporations. The reason for this prohibition lies in Michigan's experience in engaging in works of internal improvement:

> The legislature, pursuant to grant of authority contained in Article XII, Sec. 3 of the Constitution of 1835, authorized the governor to incur a debt in excess of five million dollars and embarked upon an ambitious program of constructing three railroads and two canals. The intervening financial panic forced the state to sell these projects, some of which were only partially completed, at a great sacrifice, leaving the state with a huge debt. It should be noted that one of the canal projects which commenced at the City of Mount Clemens to extend to the City of Kalamazoo was later abandoned as impractical and never completed. See this history ably reviewed in *Attorney General, ex rel. Barbour v Pingree,* 120 Mich. 550 (1899). [OAG, 1963-1964, No 4146, p 75, 77 (April 10, 1963).]

After this experience, Michigan's 1850 Constitution prohibited the State from: (a) being a party to internal improvements;[1] (b) issuing evidence of indebtedness;[2] (c) lending the credit of the State;[3] and (d) owning private stock:[4]

> The state shall not subscribe to, or be interested in, the stock of any company, association, or corporation.

[1] Const 1850, art 14, § 9.

[2] Const 1850, art 14, § 7.

[3] Const 1850, art 14, § 6.

[4] Const 1850, art 14, § 8.

The Michigan Constitution of 1908 contained a substantially similar provision.[1] The Michigan Constitution of 1963 revised this language to allow the Legislature to permit public employee retirement funds and endowment funds created for charitable or educational purposes to invest in corporate stock. Before its amendment by Proposal 02-2, Const 1963, art 9, § 19 read:

> The state shall not subscribe to, nor be interested in the stock of any company, association or corporation, except that funds accumulated to provide retirement or pension benefits for public officials and employees may be invested as provided by law; and endowment funds created for charitable or educational purposes may be invested as provided by law governing the investment of funds held in trust by trustees.

As a result of the change in the Constitution and the enactment of authorizing legislation, an investment fiduciary may now invest not more than 70% of a public employee retirement system's assets in stock. See section 14 of the Public Employee Retirement System Investment Act, 1965 PA 314, MCL 38.1134.

By approving Proposal 02-2 at the August 6, 2002, statewide election, the people revised Const 1963, art 9, § 19 to allow the Legislature to permit funds held as permanent funds or endowment funds in addition to those for charitable or educational purposes to be invested in corporate stock. As amended, Const 1963, art 9, § 19 reads:

> The state shall not subscribe to, nor be interested in the stock of any company, association or corporation, except as follows:
>
> (a) Funds accumulated to provide retirement or pension benefits for public officials and employees may be invested as provided by law.
>
> (b) Endowment funds created for charitable or educational purposes may be invested as provided by law governing the investment of funds held in trust by trustees.

[1] Const 1908, art 10, § 13.

> (c) *Funds held as permanent funds* or endowment funds other than those described in subdivision (b) *may be invested as provided by law*.
>
> Except as otherwise provided in this section, other state funds or money may be invested in accounts of a bank, savings and loan association, or credit union organized under the laws of this state or federal law, as provided by law. [Const 1963, art 9, § 19; emphasis added.]

Your questions concern only subdivision (c) of this provision.

This amendment to Const 1963, art 9, § 19 was initiated by the Michigan Legislature. Proposed constitutional amendments agreed to by two-thirds of the members elected to and serving in each house of the Legislature must be submitted to the electors at the next general election or special election as directed by the Legislature.[1] Senate Joint Resolution T, 2002 Regular Session, proposed amending sections 19, 35, 36, and 37 of article 9 to the State Constitution. After the Legislature agreed to Senate Joint Resolution T, Proposal 02-2 was placed on the August 6, 2002, statewide ballot. The ballot proposal stated:

PROPOSAL 02-2
A PROPOSAL TO ALLOW CERTAIN PERMANENT AND ENDOWMENT FUNDS TO BE INVESTED AS PROVIDED BY LAW AND INCREASE ALLOWED SPENDING FOR STATE PARKS, LOCAL PARKS, AND OUTDOOR RECREATION

The proposed constitutional amendment would:

Allow certain permanent and endowment funds, including Natural Resources Trust Fund, State Parks Endowment Fund and Veterans['] Trust Fund, to be invested as provided by law, eliminating prior restriction on investing in stocks.

Increase Natural Resources Trust Fund cap on assets from $400 million to $500 million.

[1] Const 1963, art 12, § 1.

Allow the Natural Resources Trust Fund to continue to annually expend up to 33 1/3% of Fund royalties or other revenues, up to a new asset cap of $500 million.

Increase allowed State Parks Endowment Fund spending to include interest and earnings and up to 50% of funds received from Natural Resources Trust Fund.

Should this proposal be adopted?

Yes __

No __

[Emphasis added.]

Your letter questions whether voters may have been confused by that language of the ballot proposal to understand that the only permanent and endowment funds that may be allowed to invest in stocks are the three listed ones, the Natural Resources Trust Fund, State Parks Endowment Fund, and Veterans' Trust Fund. Your question raises issues of constitutional construction.

The primary objective in interpreting a constitutional provision is to determine the text's meaning to the ratifiers, the people, at the time of ratification. *Wayne County v Hathcock*, 471 Mich 445, 468; 684 NW2d 765 (2004). This rule of "common understanding" means:

> "A constitution is made for the people and by the people. The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it. 'For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed.'" [*Traverse City School Dist v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971), quoting Cooley's Constitutional Limitations 81, emphasis removed.]

If the meaning of an amendment is apparent from the plain language of the text, it is unnecessary to consider its history and purpose and the circumstances in which it was ratified. *County Rd Ass'n of Michigan v Governor*, 474 Mich 11, 17; 705 NW2d 680 (2005).

Additional principles of law have been developed in cases where the language of a ballot proposal is alleged to have been incomplete or to have created a misimpression about the purpose of the amendment. "Where a ballot proposal contains omissions or defects likely to have misled voters as to its intent and purpose, the remedy is to void the election." *Smith v Scio Twp*, 173 Mich App 381, 389-390; 433 NW2d 855 (1988), citing *Bailey v Muskegon County Bd of Comm'rs*, 122 Mich App 808; 333 NW2d 144 (1983); *Delta College v Saginaw County Bd of Comm'rs*, 395 Mich 562; 236 NW2d 425 (1975); and *West Shore Community College v Manistee County Bd of Comm'rs*, 389 Mich 287, 296; 205 NW2d 441 (1973). But a finding of such a defect is not to be made lightly. In a case in which matters of procedure and the adequacy of ballot language were challenged, *City of Jackson v Revenue Comm'r*, 316 Mich 694, 718; 26 NW2d 569 (1947), the Court stated:

> "[T]he court must necessarily have in mind the universal rule that, whenever a constitutional amendment is attacked as not constitutionally adopted, the question presented is, not whether it is possible to condemn, but whether it is possible to uphold; that every reasonable presumption, both of law and fact, is to be indulged in favor of the legality of the amendment, which will not be overthrown, unless illegality appears beyond a reasonable doubt." [Citations omitted.]

Citing that rule from *City of Jackson*, the Supreme Court observed in *Massey v Sec'y of State*, 457 Mich 410, 420; 579 NW2d 862 (1998), that "arcane or obscure interpretations" are to be avoided in determining whether the voters were misled by the wording of a ballot proposal. If the language of a ballot proposal is not fatally defective, requiring that the election be voided, the meaning of the amendment must be determined from the language of the amendment, not the ballot description:

> It is the actual language of the amendment, and not its ballot description drawn by the State Board of Canvassers, which is the law of the state. The principle that a constitutional amendment must be construed in the light of the intent of the people by whom it was adopted does not justify a construction in accordance with a ballot description at variance with the actual unambiguous amendatory language. If the language of the amendment and that of its ballot description does not convey precisely the same meaning, the discrepancy is not relevant to the construction of the plain language of the amendment itself. [*Bailey*, 122 Mich App at 824.]

Subdivision (c) in Const 1963, art 9, § 19 states that "[f]unds held as permanent funds or endowment funds other than those described in subdivision (b) may be invested as provided by law." This language does not identify the Natural Resources Trust Fund, the State Parks Endowment Fund, or the Veterans' Trust Fund as permanent or endowment funds, nor does it state that they are the only permanent or endowment funds that are exempt from the prohibition against State stock ownership. Before the people approved Proposal 02-2 in 2002, Const 1963, art 9, § 19 stated that endowment funds *created for charitable or educational purposes* were exempt from the prohibition against State stock ownership. When the people approved Proposal 02-2, they expanded this exemption to include permanent funds and endowment funds other than those created for charitable or educational purposes *without limiting the exemption to particular endowment or permanent funds*.

While Proposal 02-2 specifically identified the Natural Resources Trust Fund, the State Parks Endowment Fund, and the Veterans' Trust Fund as funds no longer subject to the prohibition against stock ownership, neither the text of the proposed constitutional amendment nor the language of the ballot proposal limited the amendment to those funds. Proposal 02-2 amended the constitutional sections pertaining to those three funds, Const 1963, art 9, §§ 35, 36[1][1], and 37, but it also amended Const 1963, art 9, § 19 to eliminate the prohibition against State ownership of stock for other unspecified permanent or endowment funds.

The language of Proposal 02-2 stated that the proposed constitutional amendment would allow "certain permanent and endowment funds, *including*" the Michigan Natural Resources Trust Fund, the State Parks Endowment Fund, and the Michigan Veterans' Trust Fund to invest as provided by law. (Emphasis added.) The word "including" as used in Proposal 02-2 contemplates the listing of an

[1] Former § 36, compiled as art 9, § 36[1], was renumbered as art 9, § 35a by Senate Joint Resolution T of 2002.

incomplete set of the permanent or endowment funds that could be invested as provided by law.[1] If Proposal 02-2 was intended to limit the exemption from the prohibition against State stock ownership to only the Michigan Natural Resources Trust Fund, the State Parks Endowment Fund, and the Michigan Veterans' Trust Fund, it would have so stated.

Your letter also notes that, before the people voted on Proposal 02-2, the same Legislature that passed Senate Joint Resolution T, the 2002 Regular Session, enacted[2] six public acts in 2002 to implement the constitutional amendment. These six acts were to take effect only if the voters adopted Proposal 02-2. Three of these six public acts, 2002 PA 52, 2002 PA 53, and 2002 PA 54, permitted the State Treasurer to invest assets of the three permanent and endowment funds named in Proposal 02-2 in the same manner as an investment fiduciary under the Public Employee Retirement System Investment Act, 1965 PA 314. The three other public acts – whose funds were not specifically mentioned in Proposal 02-2 – also authorized the State Treasurer to invest assets of those funds in the same manner as an investment fiduciary under the Public Employee Retirement System Investment Act: 2002 PA 55 amended the Nongame Fish and Wildlife Trust Fund; 2002 PA 56 amended the Game and Fish Protection Trust Fund; and 2002 PA 57 amended the Michigan Civilian Conservation Corps Endowment Fund. While those public acts could not alter the meaning of the amendment,[1] these circumstances surrounding the adoption of Proposal 02-2 support the conclusion that, at the time of ratification, the exemption from the prohibition against stock ownership for other permanent or endowment funds was not meant to be limited to the three permanent and endowment funds named in Proposal 02-2.

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[1] The goal is to determine the "common" understanding of constitutional terms and "consideration of dictionary definitions is appropriate" to make that determination. *Michigan Rd Builders Ass'n v Dep't of Management and Budget*, 197 Mich App 636, 644; 495 NW2d 843 (1992). *Merriam-Webster's Collegiate Dictionary, 11th Edition* (2003) defines "including" as "to take in or comprise as a part of a whole."

[2] The Senate passed the six bills on the same day. All six bills were enrolled on the same day.

It is my opinion, therefore, in answer to your first question, that Const 1963, art 9, § 19 allows the State to invest funds held as permanent funds or endowment funds – including, but not limited to, the three funds listed in the Ballot Proposal 02-2 – in the stock of a company as provided by law.

Your second question is whether a legislative act giving a fund the title "permanent fund" is sufficient to qualify the fund for the stock ownership exemption. Const 1963, art 9, § 19, does not define "permanent fund."

In Michigan, all political power is inherent in the people. Const 1963, art 1, § 1. The legislative power of the State of Michigan is vested in a senate and a house of representatives. Const 1963, art 4, § 1. The Legislature, as the people's public servant, exercises broad and comprehensive power that is subject only to the Constitution of the United States and the restraints and limitations imposed by the people through Michigan's Constitution. *Young v Ann Arbor*, 267 Mich 241, 243; 255 NW 579 (1934). The Legislature can do anything that it is not prohibited from doing by the Michigan or United States Constitutions. *Attorney General ex rel O'Hara v Montgomery*, 275 Mich 504, 538; 267 NW 550 (1936). The function of the Michigan Constitution is not to legislate in detail but to generally set limits upon the otherwise plenary powers of the Legislature. *Romano v Auditor General,* 323 Mich 533, 536-537; 35 NW2d 701 (1949).

The Legislature may provide by law for the investment of funds held as a permanent fund or endowment fund and may ascribe a meaning to those terms in doing so. But it may not alter or finally determine the substantive meaning of the constitutional language. See *Sharp v City of Lansing*, 464

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[1] *Straus v Governor*, 459 Mich 526, 542; 592 NW2d 53 (1999).

Mich 792, 802; 629 NW2d 873 (2001). It is the judiciary, not the Legislature, that is the ultimate interpreter of the words in the constitution. Citing that principle, in *WPW Acquisition Co v City of Troy*, 466 Mich 117, 123-125; 643 NW2d 564 (2002), the Court held that a legislative definition of a constitutional term is unconstitutional if it is "inconsistent with the established meaning of that term at the time it was added to [the] constitutional provision." *House Speaker v Governor*, 443 Mich 560, 592; 506 NW2d 190 (1993), quoted *Pillon v Attorney General*, 345 Mich 536, 547; 77 NW2d 257 (1956), for the proposition that: "'Neither the legislature, nor this Court, has any right to amend or change a provision in the Constitution.'"

The judiciary has not had the opportunity to interpret what "permanent fund" means. Likewise, the Legislature has not provided a definition of the constitutional term "permanent fund" since the time that term was added to art 9, § 19 in 2002. It would, therefore, be premature to express a legal opinion concerning the features necessary to qualify a fund as a permanent fund.

Two sources do, however, provide some guidance in ascertaining the meaning of this term as it appears in art 9, § 19. First, Proposal 02-2 identified at least three funds – the Natural Resources Trust Fund, the State Parks Endowment Fund, and the Veterans' Trust Fund – as falling within the scope of the new provision allowing their investment in stock as provided by law. In addition, at the time the voters were considering Proposal 02-2, the State of Michigan Comprehensive Annual Financial Report for the fiscal year ending September 30, 2001, prepared by the Department of Management and Budget under generally accepted government accounting standards, had been printed and reported that the State of Michigan had five "permanent funds" in 2000-2001: the Michigan Natural Resources Trust Fund; the Michigan State Parks Endowment Fund; the Michigan Civilian Conservation Corps Endowment Fund; the Michigan Veterans' Trust Fund; and the Children's Trust Fund.

A review of these established funds reveals certain common attributes that may serve to characterize a fund as "permanent." These include prescribing the fund's purposes, authorizing the investment and reinvestment of the fund's money only to fulfill those purposes, restricting the amount of money that may be allocated to or accumulate in the fund, preserving the fund's mission by providing that the money in the fund does not lapse back to the State's General Fund at the end of each fiscal year, and mandating a regular accounting of the fund's revenues and expenditures for the Legislature. These substantive characteristics are consistent with how the term "permanent fund" is used in Const 1963, art 9, § 19.

It is my opinion, therefore, in answer to your second question, that an act of the Legislature giving a fund the title "permanent fund" is not, by itself, sufficient to qualify the fund for the stock ownership exemption under Const 1963, art 9, § 19. A fund so designated must also possess the substantive characteristics of a "permanent fund" as that term is used in the Constitution.

The third question you ask is whether sections 88e, 88f, 88g, and 88h of 2005 PA 225, which require the Michigan Strategic Fund to create and operate investment programs and create a new permanent fund, the Jobs for Michigan Investment Fund, violate the prohibition against State stock ownership in Const 1963, art 9, § 19.

The Michigan Strategic Fund Act, 1984 PA 270, MCL 125.2001 *et seq,* creates the Michigan Strategic Fund as a public body corporate and politic. The Michigan Strategic Fund exists to assist business enterprise in obtaining additional sources of financing to aid this State in achieving the goal of long-term economic growth and full employment, to preserve existing jobs, to create new jobs, and to

reduce the cost of business and production. MCL 125.2002. The Michigan Strategic Fund exists within the Michigan Department of Treasury, but it functions independently of the State Treasurer as an autonomous entity. MCL 125.2005(1). The Legislature has conferred broad authority on the Michigan Strategic Fund to carry out its purposes and objectives. *Tiger Stadium Fan Club Inc v Governor*, 217 Mich App 439, 457; 553 NW2d 7 (1996). The purposes, powers, and duties of the Michigan Strategic Fund are vested in and exercised by its Board of Directors. MCL 125.2005(2).

2005 PA 225 amended the Michigan Strategic Fund Act to add a new Chapter 8A to the Act, which includes the sections about which you inquire. Section 88b requires the Michigan Strategic Fund to create and operate programs authorized under the new chapter. MCL 125.2088b. Section 88e requires the Michigan Strategic Fund to create and operate a private equity investment program. MCL 125.2088e. Section 88f requires the Michigan Strategic Fund to create and operate the venture capital investment program. MCL 125.2088f. Section 88g requires the Michigan Strategic Fund to create and operate a mezzanine investment program. MCL 125.2088g. The Legislature has authorized the Michigan Strategic Fund Board to undertake equity investments in discharging these three programs. MCL 125.2088h(7). The Michigan Strategic Fund Board shall exercise the duties of a fiduciary with respect to these investments. See MCL 125.2088c(1).

Section 88h(1) of 2005 PA 225, MCL 125.2088h(1), creates the Jobs for Michigan Investment Fund as a "permanent fund" authorized by Const 1963, art 9, § 19:

> The jobs for Michigan investment fund is created within the fund as a permanent fund authorized by section 19 of article IX of the state constitution of 1963. Money in the investment fund at the close of the fiscal year shall remain in the investment fund and shall not lapse to the general fund.

To carry out the purposes of Chapter 8A of the Michigan Strategic Fund Act, the Legislature appropriated and transferred $400 million for the fiscal year ending September 30, 2006, from the 21st Century Jobs Trust Fund to the Michigan Strategic Fund. Section 88j(2) of 2005 PA 225, MCL 125.2088j(2).

The Legislature established the 21st Century Jobs Trust Fund to receive the net proceeds of the sale of tobacco settlement revenues to the Michigan Tobacco Settlement Finance Authority. MCL 12.257(1). "Tobacco settlement revenues" are monies received by this State that are attributable to the Master Settlement Agreement incorporated into a consent decree and final judgment entered into on December 7, 1998, in *Attorney General ex rel Michigan v Philip Morris Inc*, Ingham County Circuit Court, Docket No. 96-84281 CZ. MCL 12.252(f). The Legislature authorized the State Budget Director, with the approval of the State Administrative Board, to sell tobacco settlement revenues to either the Tobacco Settlement Finance Authority or to other persons if the sale agreement is in the best interest of the State and the net proceeds of the sale do not exceed $400,000,000.00. MCL 129.268(1). Upon the request from the Michigan Strategic Fund Board, the State Treasurer must transfer appropriated funds from the 21st Century Jobs Trust Fund to the Michigan Strategic Fund as necessary for it to disburse money for programs authorized under Chapter 8A of the Michigan Strategic Fund Act. MCL 125.2088j(1).

Money appropriated from the 21st Century Jobs Trust Fund to the Michigan Strategic Fund may be deposited in the Jobs for Michigan Investment Fund. MCL 125.2088h(5)(a). The money deposited in the Jobs for Michigan Investment Fund and its net income may be expended by the Michigan Strategic Fund only for purposes authorized under Chapter 8A of the Michigan Strategic Fund Act, including the private equity investment program, the venture capital investment program, and the

mezzanine investment program. MCL 125.2088h(3) and (6). Except for the appropriations described in section 88j(3), the Michigan Strategic Fund Board cannot expend more than 40% of the amounts appropriated from the 21st Century Jobs Trust Fund for the private equity investment program, the venture capital investment program, and the mezzanine investment program combined. MCL 125.2088b(3)(b). Money in the investment fund at the close of the fiscal year remains in the investment fund and does not lapse to the general fund. MCL 125.2088h(1). In addition to the preexisting requirement that the Michigan Strategic Fund must be annually audited,[1] the Auditor General must conduct and report an annual "financial postaudit" and, every three years, conduct and report a "performance postaudit" of the investment fund. MCL 125.2088n.

Nothing in the Michigan Strategic Fund Act limits the permanency of the Jobs for Michigan Investment Fund. In fact, by their very nature, the fund's investments in early-stage companies will take time to mature, earn financial returns, and secure its mission of a diversified economy, job creation, and increased capital investment for Michigan.

Const 1963, art 9, § 19 allows funds held as permanent funds to be invested in the stock of any company as provided by law. The Legislature created the Jobs for Michigan Investment Fund in 2005 PA 225 as a permanent fund authorized by Const 1963, art 9, § 19 and vested it with the characteristics common to a "permanent fund" consistent with the meaning of that term under the Constitution. Like all laws enacted by the Legislature, 2005 PA 225 is entitled to a presumption of constitutionality. The courts give deference to a deliberate act of the Legislature and have emphasized that every reasonable "intendment must be indulged in favor of the validity of the act." *Council of Organizations & Others for Education About Parochiaid v Governor*, 455 Mich 557, 570; 566 NW2d 208 (1997), quoting *Cady*

[1] MCL 125.2009.

v Detroit, 289 Mich 499, 505; 286 NW 805 (1939).[1] Only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution will a court refuse to sustain its validity. *Id.* The Jobs for Michigan Investment Fund may, thus, invest in stock as part of the private equity investment program, the venture capital investment program, and the mezzanine investment program.[2]

It is my opinion, therefore, in answer to your third question, that sections 88e, 88f, 88g, and 88h of 2005 PA 225, MCL 125.2088e – 125.2088(h), which require the Michigan Strategic Fund to create and operate various investment programs and create the Jobs for Michigan Investment Fund as a permanent fund, are constitutional under Const 1963, art 9, § 19.

MIKE COX
Attorney General

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[1] As explained in *Gora v City of Ferndale*, 456 Mich 704, 720; 576 NW2d 141 (1998):

> One of the reasons underlying this presumption is that persons holding legislative office . . . are duty-bound to act in conformity with their oaths to support the Michigan and federal constitutions, just as are members of the judiciary. *Marbury v Madison*, 5 U.S. (1 Cranch) 137, 179-180, 2 L. Ed. 60 (1803). As Justice Holmes put it, "it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." *Missouri, Kansas & Texas R Co v May*, 194 U.S. 267, 270; 24 S. Ct. 638; 48 L. Ed. 971 (1904).

[2] The private equity investment program, the venture capital investment program, and the mezzanine investment program are programs and do not exist as independent permanent funds. Therefore, when the Michigan Strategic Fund Board invests funds from the Jobs for Michigan Investment Fund in these three programs, the Michigan Strategic Fund must own the investments.

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

INVESTMENTS: Allowable public investment in flexible repurchase agreements

SCHOOL DISTRICTS:

REVISED SCHOOL CODE:

PUBLIC CORPORATIONS:

Flexible repurchase agreements are allowable investments for Michigan school districts under the Revised School Code, 1976 PA 451, and for Michigan "public corporations" under 1943 PA 20, with the approval of their governing bodies and subject to the limitations of those acts.

Opinion No. 7196 December 27, 2006

Honorable Wayne Kuipers
State Senator
The Capitol
Lansing, MI 48909

You have asked if flexible repurchase agreements are allowable investments for Michigan school districts under the Revised School Code, 1976 PA 451, and for Michigan public corporations under 1943 PA 20.

Section 1223 of the Revised School Code, 1976 PA 451, MCL 380.1223, authorizes local school boards to invest "debt retirement funds, building and site funds, building and site sinking funds, or general funds of the district" in, among other investments, "United States government or federal agency obligation repurchase agreements."

Similarly, section 1 of 1943 PA 20, an act relating to the investment of funds of political subdivisions, authorizes "public corporations"[1] to invest certain of their funds.[2] MCL 129.91. This section provides:

> (1) Except as provided in section 5, the governing body by resolution may authorize its investment officer to invest the funds of that public corporation in 1 or more of the following:
>
> (a) Bonds, securities, and other obligations of the United States or an agency or instrumentality of the United States.
>
> * * *
>
> (d) Repurchase agreements consisting of instruments listed in subdivision (a).

Neither the Revised School Code nor 1943 PA 20 defines "repurchase agreement" for purposes of those acts. When interpreting statutes that do not provide their own definitions for a term, "technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning." MCL 8.3a. Moreover, although the terms of one statute are not dispositive in determining the meaning of another, the terms of one statute may be taken as a factor in determining the interpretation of another statute. *Linton v Arenac County Rd Comm'n,* ___ Mich App ___; ___ NW2d ___; 2006 Mich App LEXIS 3511 (November 28, 2006).

Under the Insurance Code of 1956, MCL 500.100 *et seq,* the term "repurchase agreement" is defined as

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[1] MCL 129.91(6)(d) defines a "public corporation" as "a county, city, village, township, port district, drainage district, special assessment district, or metropolitan district of this state, or a board, commission, or another authority or agency created by or under an act of the legislature of this state."

[2] "Funds" are defined as: "[T]he money of a public corporation, the investment of which is not otherwise subject to a public act of this state or bond authorizing ordinance or resolution of a public corporation that permits investment in fewer than all of the investment options listed in subsection (1) or imposes 1 or more conditions upon an investment in an option listed in subsection (1)." MCL 129.91(6)(b).

> "Repurchase agreement", including a reverse repurchase agreement, means an agreement, including related terms, that provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or an agency of the United States against the transfer of funds by the transferee of the certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by the transferee to transfer to the transferor certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than 1 year after the transfers or on demand, against the transfer of funds. [MCL 500.8115a(9)(g).]

In Downes and Goodman, *Dictionary of Finance and Investment Terms* (Woodbury, New York: Barron's Educational Series, Inc, 1985), a "repurchase agreement" is defined as an "agreement between a seller and a buyer, usually of U.S. Government securities, whereby the seller agrees to repurchase the securities at an agreed upon price and, usually, at a stated time." This definition is consistent with that used by the Federal Deposit Insurance Corporation. See "Repurchase Agreements of Depository Institutions with Securities Dealers and Others; Notice of Modification of Policy Statement," 63 Fed Reg 8645 (February 20, 1998), which defines a "repurchase agreement" as "one in which a party that owns securities, acquires funds by selling the specified securities to another party under a simultaneous agreement to repurchase the same securities at a specified price and date."

Thus, a repurchase agreement,[1] as that term is used in the financial/bond industry, is a sale by a bank or dealer of government securities, with a simultaneous agreement to repurchase those same securities on a short-term basis[2] with a fixed interest rate. Repurchase agreements, also called "repos" in the industry, are commonly used to invest the proceeds from the sale of tax-exempt bonds until those funds are needed. They offer the purchaser the safety of being collateralized with governmental

[1] A number of state entities have been granted statutory authority to invest in repurchase agreements, including the State Hospital Finance Authority (MCL 331.42(i)(vi)), the Higher Education Student Loan Authority (MCL 390.1154(h)), and the State of Michigan Retirement Systems (MCL 38.1137(1)(g)).

[2] Repurchase agreements can be structured with terms ranging from any number of days to a typical maximum of one year.

securities, and because the purchaser knows the interest rate in advance, it can be assured of its compliance with federal arbitrage calculation[1] requirements that limit earnings on the investment of tax-exempt bond proceeds.

Your request inquires about the type of repurchase agreement recognized in the industry as the "flexible repurchase agreement," also known as a "flex repo." *Instruments of the Money Market*, edited by Timothy Q. Cook and Robert K. Laroche (Federal Reserve Bank of Richmond, 1993), defines a flex repo as:

> [A] term agreement arranged between a dealer and a major customer, typically a corporation, or a municipality or similar authority, in which the customer buys securities from the dealer and may sell some of them back prior to the final maturity date. The funds invested in a flex repo often are intended for use in financing construction or similar projects to be completed in phases. When funds are needed for a given phase of the project, the customer sells the required amount of securities back to the dealer. [*Id.,* at p 72.]

A flexible repurchase agreement is a short-term investment vehicle designed to meet the special needs of investors, including school districts and public corporations. Like a repurchase agreement, it has a fixed interest rate and a fixed maturity. In addition, flex repos have a liquidity feature that allows a school district or other purchaser to periodically sell some of the securities back to the seller to acquire funds to pay project costs, usually associated with the construction of a school or other public building.

Typically before entering into a repurchase agreement, including a flexible repurchase agreement, the governmental entity, through the bond trustee or another third-party custodian, solicits bids from potential repo providers. A request for bids will typically require that the repo bidder have a specified minimum credit rating. In addition, requests for bids often require that the securities to be delivered have a market value exceeding the value of funds to be delivered, usually 102%, or more. As

[1] Arbitrage occurs when a bond issuer invests its bond proceeds at an interest rate higher than the overall borrowing yield on its bond issue. As it relates to tax-exempt bonds, arbitrage refers to the investment of proceeds received from the sale of tax-

additional security, the request for bids can require that the repo provider, on a weekly or even daily basis, revalue the securities delivered, and if the price has dropped below the agreed valuation level (for example, 102%), additional securities must be provided.

When 1986 PA 132 amended the Revised School Code to add section 1223(1)(e), MCL 380.1223(1)(e), authorizing school districts to invest in repurchase agreements collateralized by United States government or federal agency obligations, it also amended MCL 380.1223(6) to read as follows:

> Security in the form of collateral, surety bond, or another form may be taken for the deposits or investments of a school district in a bank, savings and loan association, or credit union. However, an investment under section 622(2)(e) or section 1223(1)(e) or in an investment pool that includes instruments eligible for investments under sections 622(2)(e) and 1223(1)(e) *shall be secured by the transfer of title and custody of the obligations to which the repurchase agreements relate* and an undivided interest in those obligations must be pledged to the school district for these agreements. [Emphasis added.]

While the statute requires that title and custody of the securities be transferred, it does not expressly mandate to whom title and custody be transferred. The purpose of the statute is to protect the school district's investment. If title and custody were not transferred, a repurchase agreement provider could collateralize other repos with the same securities without the knowledge of the school district. In that case, if the provider were to default or declare bankruptcy, the school district could be unsecured and its investment significantly diminished or lost entirely. Accordingly, custody and title to the securities should be transferred to the school district or to a bond trustee or third-party custodian in such a manner as to achieve the legislative purpose.

In contrast, 1943 PA 20 does not require that custody and title to securities collateralizing a repurchase agreement be transferred. In order to protect the interests of the investing public corporation,

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exempt debt in higher-yielding taxable securities subject to applicable limits imposed by the Internal Revenue Code.

the request for bids and repurchase agreement could require that title and custody of the securities be transferred to the public corporation or to a bond trustee or third party custodian.[1]

Clear and unambiguous statutory language must be enforced as written according to its plain meaning. *Dean v Dep't of Corrections*, 453 Mich 448, 454; 556 NW2d 458 (1996). The Revised School Code clearly authorizes school districts and 1943 PA 20 clearly authorizes public corporations to invest in repurchase agreements, as long as they are collateralized by United States government or federal agency obligations. A flexible repurchase agreement is a type of repurchase agreement.[2]

It is important to emphasize that an officer or manager who invests funds for a public entity has a fiduciary duty to invest those funds knowledgeably, prudently, and always in the best interest of the public entity. Any investment methodology may be subject to manipulation and fraud, in addition to normal market forces. Municipal investors must be cautious, study and understand the markets they utilize, and, most importantly, monitor their investments for total return, security, and soundness.

It is my opinion, therefore, that flexible repurchase agreements are allowable investments for Michigan school districts under the Revised School Code, 1976 PA 451, and for Michigan public corporations under 1943 PA 20, with the approval of their governing bodies and subject to the limitations of those acts.

MIKE COX
Attorney General

[1] The Legislature can amend 1943 PA 20 to mandate similar statutory protection for public corporations.

[2] Another type of investment agreement similar to a flexible repurchase agreement referred to in your letter is the guaranteed investment contract or GIC. While these terms are sometimes used interchangeably in the investment industry, they are different investment products. GICs typically involve insurance companies as a party.

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

INSURANCE CODE OF 1956:	Authority of Commissioner of the Office of Financial and Insurance Services to share
OFFICE OF FINANCIAL AND INSURANCE SERVICES:	confidential information with regulatory agencies of foreign countries

Section 222(7)(b) of the Insurance Code, MCL 500.222(7)(b), authorizes the Commissioner of the Office of Financial and Insurance Services to share confidential documents and information regarding insurance companies with "any relevant regulatory agency" of another country, provided the Commissioner is given assurances that the information will be kept confidential.

Opinion No. 7197 January 24, 2007

Ms. Linda A. Watters
Commissioner
Office of Financial and Insurance Services
Department of Labor and Economic Growth
P.O. Box 30220
Lansing, Michigan 48909

You have asked if section 222(7)(b) of the Insurance Code authorizes the Commissioner of the Office of Financial and Insurance Services to share confidential documents and information regarding insurance companies with relevant regulatory agencies of other countries.

The Insurance Code of 1956, 1956 PA 218, MCL 500.100 *et seq,* broadly authorizes the Insurance Commissioner[1] to examine the affairs of any insurance company at any time after it has been authorized to do business in Michigan. MCL 500.222. This includes "domestic," "foreign," and "alien" insurance companies as defined in section 110 of the Insurance Code, MCL 500.110. Domestic

[1] Executive Order 2000-4 transferred all of the authority, powers, duties, functions, and responsibilities of the Insurance Bureau and of the Commissioner of Insurance to the Office of Financial and Insurance Services and the Commissioner of the Office of Financial and Insurance Services effective April 3, 2000.

insurance companies are formed under Michigan law. MCL 500.110(1). Foreign insurers are formed under the laws of the District of Columbia or any other state, commonwealth, territory, or possession of the United States. MCL 500.110(2). Alien insurance companies are formed under the laws of any country other than the United States or any state, district, commonwealth, territory, or possession of the United States. MCL 500.110(3). A domestic, foreign, or alien insurer "shall not be authorized" to do business in this State or continue to be so authorized if the insurer is not or does not continue to be "safe, reliable, and entitled to public confidence." MCL 500.403.

Section 222(7) of the Insurance Code, MCL 500.222(7), declares that most information and documents generated in the course of an insurance company examination are confidential. It requires the Commissioner to withhold any examination report from public inspection until the report is final and filed with the Commissioner. Even then, the Commissioner may continue to withhold an examination report from public inspection "for such time as he or she may consider proper." In any event, section 222(7) mandates that documents and information connected to an examination report or an investigation shall be confidential and shall not be disclosed except as specifically allowed in that section.

Section 222(7) explicitly authorizes the Commissioner to share confidential information with certain interested persons, such as the Governor, the Attorney General, and other regulatory agencies, if they agree to keep the information confidential:

> If assurances are provided that the information will be kept confidential, the commissioner may disclose confidential work papers, correspondence, memoranda, reports, records, or other information as follows:
>
> (a) To the governor or the attorney general.
>
> (b) To any relevant regulatory agency, including regulatory agencies of other states or the federal government.

> (c) In connection with an enforcement action brought pursuant to this or another applicable act.
>
> (d) To law enforcement officials.
>
> (e) To persons authorized by the Ingham county circuit court to receive the information.
>
> (f) To persons entitled to receive such information in order to discharge duties specifically provided for in this act. [MCL 500.222(7).]

Under section 226 of the Insurance Code, MCL 500.226, it is a misdemeanor to disclose confidential examination or investigation information except as authorized by section 222(7).

Whether the Commissioner may share confidential examination or investigation information and documents with relevant regulatory agencies of other countries turns on the meaning of section 222(7)(b) of the Insurance Code. If assurances are provided that the information will be kept confidential, the Commissioner may disclose confidential information and documents: "(b) To any relevant regulatory agency, including regulatory agencies of other states or the federal government." It may be argued that section 222(7)(b) encompasses regulatory agencies of another country because the words "to *any* relevant regulatory agency" are expansive. (Emphasis added.) Or it might be argued that the words "including regulatory agencies of other states or the federal government" are words of limitation, implicitly meant to exclude regulatory agencies of other countries.

The most basic rule of statutory construction is to determine the Legislature's intent by first looking to the words of a statute themselves. "The words of a statute provide 'the most reliable evidence of its intent.'" *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999), quoting *United States v Turkette*, 452 US 576, 593; 101 S Ct 2524; 69 L Ed 2d 246 (1981). Every word must be given

meaning and statutes should not be construed to make any word superfluous. *Koontz v Ameritech Services*, 466 Mich 304, 312; 645 NW2d 34 (2002).

The word "including" in a statutory definition commonly has two possible meanings. The general rule is that "including" introduces one or more merely illustrative examples. "When 'include' is utilized, it is generally improper to conclude that entities not specifically enumerated are excluded." 2A Singer, Sutherland Statutory Construction (6th ed), § 47.23, p 316. The Michigan Supreme Court noted this interpretation in *Michigan Bell Telephone Co v Treasury Dep't*, 445 Mich 470, 479; 518 NW2d 808 (1994):

> [A]s one authority has explained, where a term is defined by declaring what it "includes," it is susceptible to extension of meaning by construction. 2A Singer, Sutherland Statutory Construction (5th ed), § 47.07, pp 151-156. When used in a statutory definition, the word "includes" is a term of enlargement, not of limitation. It "conveys the conclusion that there are other items includable, though not specifically enumerated . . . ." *Id*., p 152. Such a definition suggests, if not requires, a construction broad enough to encompass other items not explicitly mentioned.

Applying this rule, the Court concluded that the statutory definition of property subject to taxation by 1905 PA 282 encompassed tangible as well as intangible property, even though intangible property was not specifically listed in the examples following the word "include" in the statute. *Id.*

Alternatively**,** the word "including" may introduce a list that restricts a more general preceding term. For example, in *Frame v Nehls*, 452 Mich 171, 178-179; 550 NW2d 739 (1996), the Court noted: "When used in the text of a statute, the word 'includes' can be used as a term of enlargement or of limitation, and the word in and of itself is not determinative of how it is intended to be used." In that case, the Court concluded that "includes" was used as a term of limitation, which introduced an

exclusive list of those child custody disputes that would allow grandparents to petition for an order of visitation with their grandchildren.

As noted above, the Legislature authorized disclosure to "*any* relevant regulatory agency." MCL 500.222(7)(b). (Emphasis added.) The word "any" must be given meaning. The Michigan Supreme Court has held that "any" is all-inclusive. "The word 'any' means just what it says. It includes 'each' and 'every.'" *Sifers v Horen,* 385 Mich 195, 199, n 2; 188 NW2d 623 (1971).

Resolving the intent of the Legislature and the significance of the words "including" and "any" requires that the words of the statute be read together to harmonize their meanings, giving effect to the act as a whole. *Sweatt v Dep't of Corrections*, 468 Mich 172, 180 n 4; 661 NW2d 201 (2003). To the extent that there is any ambiguity in a statute, the courts seek "to effectuate the Legislature's intent through a reasonable construction, considering the purpose of the statute and the object sought to be accomplished." *Macomb County Prosecuting Attorney v Murphy*, 464 Mich 149, 158; 627 NW2d 247 (2001).

The courts have long held that because the business of insurance is of great public interest, insurance laws are to be liberally construed to protect the public, policyholders, and creditors. *Attorney General ex rel Ins Comm'r v Michigan Surety Co,* 364 Mich 299, 325; 110 NW2d 677 (1961); *Szabo v Ins Comm'r*, 99 Mich App 596, 599; 299 NW2d 364 (1980).

As you advise in your letter, the business of insurance has become global. Because Michigan's largest life insurer is owned by an insurer domiciled in the United Kingdom and the financial strength of each bears on the strength of the other, you explain that the insurance regulator of each jurisdiction has

an interest in the financial condition of both insurers. In your view, access to such information protects Michigan citizens. "Information is critical to assessing the risk to a Michigan company operating within a multinational holding company supervised by a foreign regulator. The accurate assessment of risk better protects Michigan consumers." Your staff further advises that in order for Michigan to obtain the information it needs from other regulatory agencies, it must be willing to reciprocate that service by sharing information with them.

Michigan courts have made it clear that "powers necessary to a full effectuation of authority expressly granted will be recognized as properly appertaining to the agency." *In re Quality of Service Standards for Regulated Telecommunication Services*, 204 Mich App 607, 613; 516 NW2d 142 (1994). As discussed earlier, MCL 500.222 authorizes the Commissioner to examine the affairs of any insurance company at any time after it has been authorized to do business in Michigan, and no domestic, foreign, or alien insurer may continue to be authorized to do business in this State if the insurer does not continue to be "safe, reliable, and entitled to public confidence." MCL 500.403. Moreover, MCL 500.222(7) expressly grants the Commissioner the power to share confidential information with a "relevant regulatory agency" if the agency provides assurances the information will be kept confidential. Where, as indicated in your letter, the financial strength of an insurer regulated by an agency in a foreign country bears upon the financial condition of a particular insurer doing business in Michigan, the need to share information between the regulatory agencies to fully effectuate the Commissioner's duties is apparent. Under these circumstances, the regulatory agency in the foreign country clearly qualifies as a "relevant" regulatory agency.

The history of this provision, which reveals a legislative intent to expand the scope of the Commissioner's powers to share information, provides further support for a broad construction. Before

it was amended by 1992 PA 182, what was then section 222(4) only authorized the Commissioner to share confidential information with the insurance commissioners of other states.

> In any event, all insurance bureau materials related to an examination report shall be withheld from public inspection and shall be confidential. This subsection shall not be construed as prohibiting the commissioner from releasing *to another state's insurance commissioner* information relating to the examination of an insurer if the commissioner from the other state provides assurances that the information will be kept confidential. [1956 PA 218, section 222(4), MCL 500.222(4), as amended by 1989 PA 302; emphasis added.]

1992 PA 182 expanded the range of persons with whom the Commissioner may share confidential information. That Act amended then section 222(4) to authorize the Commissioner to share confidential information not just with the insurance commissioner of another state, but with, among others, "any relevant regulatory agency, including regulatory agencies of other states or the federal government."[1]

It is noteworthy that the Legislature chose expansive, rather than restrictive, language. Had the Legislature intended to limit MCL 500.222(7)(b) to regulatory agencies in the United States, it could easily have done so by providing, for example, that disclosure was authorized: "To relevant regulatory agencies of this state, other states, or the federal government."[2] This would have excluded regulatory agencies outside the United States under the maxim *expressio unius est exclusio alterius.* See, e.g., *Sebewaing Industries, Inc, v Village of Sebewaing*, 337 Mich 530, 545; 60 NW2d 444 (1953) ("Express mention in a statute of one thing implies the exclusion of other similar things").

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[1] 1994 PA 443 subsequently renumbered section 222(4) as section 222(7) with no further changes made to the language under review here.

[2] *Cf.*, MCL 500.222(8) (providing that the confidentiality requirements of MCL 500.222(7) do not apply in any proceeding or action brought against or by the insurer under this act or any other applicable act "of this state, any other state, or the United States").

All of these factors convey a legislative intent to facilitate the Commissioner's sharing of information with "any relevant regulatory agency," without geographic limitation, insofar as that sharing is consistent with fulfilling her responsibilities under the Insurance Code, if assurances are provided that the information will be kept confidential.[1]

It is my opinion, therefore, that section 222(7)(b) of the Insurance Code, MCL 500.222(7)(b), authorizes the Commissioner of the Office of Financial and Insurance Services to share confidential documents and information regarding insurance companies with "any relevant regulatory agency" of another country, provided the Commissioner is given assurances that the information will be kept confidential.

MIKE COX

Attorney General

[1] MCL 500.222(7) does not dictate the procedure for sharing such information. The agency has discretion to determine how best to arrange for the disclosure. *Cf*., *Coffman v State Bd of Examiners in Optometry,* 331 Mich 582, 590; 50 NW2d 322 (1951) (agencies have incidental power necessary to carry out the purpose of the Legislature, especially in matters of internal administration). What is essential is that the Commissioner be provided with reliable assurances that the information will be kept confidential by the recipient regulatory agency.

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

INCOMPATIBILITY: Incompatibility of offices of deputy county treasurer and township treasurer

PUBLIC OFFICES & OFFICERS:

The offices of deputy county treasurer and treasurer of a township within the same county are incompatible.

Opinion No. 7198 January 29, 2007

Honorable Kevin A. Elsenheimer
State Representative
State Capitol
Lansing, MI 48909

You have asked whether the offices of deputy county treasurer and treasurer of a township within the same county are incompatible.

The Incompatible Public Offices Act, 1978 PA 566 (Act), MCL 15.181 *et seq*, addresses the simultaneous holding of two or more public offices. Section 2 of the Act, MCL 15.182, prohibits public officers and employees from holding two or more "incompatible offices" at the same time.

The Act defines "incompatible offices" as:

> [P]ublic offices held by a public official which, when the official is performing the duties of any of the public offices held by the official, results in any of the following with respect to those offices held:
>
> (i) The subordination of 1 public office to another.
>
> (ii) The supervision of 1 public office by another.
> (iii) A breach of duty of public office. [MCL 15.181(b).]

The Act comprehends within its prohibitions not only public officers, but also public employees. *Macomb County Prosecuting Attorney v Murphy*, 464 Mich 149; 627 NW 247 (2001). Each of the positions about which you inquire are public offices, the holders of which are public officers.

The position of county treasurer is an elective county office whose duties and powers are provided by law. Const 1963, art 7, § 4. A county treasurer's statutory duties include receiving and accounting for all county funds. MCL 48.40. Each county treasurer "shall appoint a deputy [county treasurer]," who in case of the absence or disability of the county treasurer, or in cases of a vacancy, performs all of the duties of the county treasurer.[1] MCL 48.37. In exercising deputed powers, the deputy, like the county treasurer, is a county official.

The position of township treasurer is an elective township office whose powers and duties are provided by law. Const 1963, art 7, § 18. These duties include receiving and accounting for all money belonging to the township. MCL 41.76. In addition, the township treasurer is responsible for collecting and accounting for all ad valorem property taxes assessed against taxable property in the township for state, county, township, and other public entities under the General Property Tax Act, 1893 PA 206, MCL 211.1 *et seq.* This act details the respective duties and responsibilities of county and township offices, including their treasurers, with respect to the imposition and collection of ad valorem property taxes for county, state, and township purposes. Your question may be answered by examining provisions of the General Property Tax Act that are material to the interaction of these officers to determine whether one of the offices is subordinate to the other or supervises the other.

[1] In counties having a population in excess of 50,000, deputies may be appointed, each of whom "may perform all the official acts" which county treasurers "might legally" do. MCL 45.41. In counties having a population in excess of 500,000, a chief deputy treasurer may be appointed. MCL 45.51.

The process of assessing, collecting, and enforcing property taxes is an annual one. The township clerk, on or before September 30, delivers to the township supervisor and county clerk a statement of the aggregate amount of all taxes to be raised in the township for township, school, highway, drain, and all other purposes. The statement and supporting papers are submitted by the county clerk to the county board of commissioners. MCL 211.36.

Under section 37 of the General Property Tax Act, the county board of commissioners at its annual meeting held in October: 1) determines the amount of money to be raised for county purposes and apportions that amount among the townships; 2) examines each township's statement and certification of taxes to be raised in the township for township, school, highway, drain, and other purposes and entertains objections and authorizes and requires defects and omissions to be "corrected" or "supplied"; and 3) "direct[s] that the money proposed to be raised for township, school, highway, drain, and all other purposes as authorized by law, shall be spread upon the assessment roll of the proper townships." MCL 211.37. Section 37 further provides:

> This action and direction shall be entered in full upon the records of the proceedings of the board, and shall be final as to the levy and assessment of all the taxes, except if there is a change made in the equalization of any county by the state tax commission upon appeal in the manner provided by law. The direction for spread of taxes shall be expressed in terms of millages to be spread against the taxable values of properties and shall not direct the raising of any specific amount of money. [MCL 211.37.]

The clerk of the board of commissioners, immediately after the board's apportionment actions, issues certificates to the county treasurer and to each township's supervisor "showing the millages apportioned to each township for state, county and the various township purposes, each tax being kept distinct." MCL 211.38.

The township assessing officer then completes the assessment roll. The appropriate assessing officer in each local tax collecting unit "shall assess the taxes apportioned to that local tax collecting unit according to the taxable values entered in the assessment roll of that local tax collecting unit for the year." MCL 211.39. Before the supervisor or assessing officer delivers the roll to the township treasurer, "he or she shall carefully foot [total] the several columns of valuation and taxes, and make a detailed statement, which he or she shall give the clerk of his or her township . . . and the clerk shall immediately charge the amount of taxes to the township treasurer." MCL 211.41.

Section 42 of the General Property Tax Act further specifies the duties of the township treasurer. The township supervisor "shall prepare a tax roll, with the taxes levied as provided in this act, and annex to the roll a warrant signed by him or her, commanding the township . . . treasurer" to: 1) collect the several sums mentioned in the last column of the roll; 2) retain the amount receivable by law into the township treasury for the purposes therein specified; 3) pay over as provided in section 43 to the county treasurer the amounts that are collected for state and county purposes; and 4) account in full for all money received on or before the next following March 1. MCL 211.42.

Section 43(2) requires that the township treasurer be properly bonded with sufficient sureties approved by the county treasurer:

> The treasurer . . . on or before the third day immediately preceding the day the taxes to be collected become a lien, shall give to the county treasurer a bond running to the county in the actual amount of state, county, and school taxes . . . with sufficient sureties to be approved by the supervisor of the township and the county treasurer, conditioned that he or she will pay over to the county treasurer as required by law all state and county taxes, pay over to the respective school treasurers all school taxes that he or she collects during each year of his or her term of office, and duly and faithfully perform all the other duties of the office of treasurer. [MCL 211.43(2).]

Upon receipt of the tax roll, the township treasurer shall proceed to collect the taxes. MCL 211.44. All taxes are to be collected before the first day of March each year. MCL 211.45.

Section 43 of the General Property Tax Act details the respective duties of county and township treasurers with respect to the collection of taxes paid timely or returned delinquent, and the accounting each local treasurer must make to the county treasurer, among others. Subsection 43(3)(a) and (b) provides:

> (a) Within 10 business days after the first and fifteenth day of each month, the township or city treasurer shall account for and deliver to the county treasurer the total amount of state and county tax collections on hand on the first and fifteenth day of each month; to the school district treasurers the total amount of school tax collections on hand on the first and fifteenth day of each month; and to the public transportation authorities the total amount of public transportation authority tax collections on hand the first and fifteenth day of each month. If the intermediate school district and community college district provide for direct payment pursuant to subsection (9), the township or city treasurer shall also account for and deliver to the intermediate school district and the community college district the total respective amounts of school tax collections on hand the first and fifteenth day of each month. This subdivision shall not apply to the month of March.
>
> (b) Within 10 business days after the last day of February, the township or city treasurer shall account for and deliver to the county treasurer at least 90% of the total amount of state and county tax collections on hand on the last day of February; to the school district treasurers at least 90% of the total amount of school tax collections on hand on the last day of February; and to the public transportation authorities at least 90% of the total amount of public transportation authority tax collections on hand on the last day of February. If the intermediate school district and community college district provide for direct payment pursuant to subsection (9), the township or city treasurer shall also account for and deliver to the intermediate school district and community college district at least 90% of the total respective amounts of school tax collections on hand on the last day of February. [MCL 211.43(3)(a) and (b).]

Section 54 of the General Property Tax Act requires township treasurers to pay the county treasurer the state and county taxes collected and account for unpaid taxes:

> Within 20 calendar days after the time specified in his warrant, the township treasurer or other collecting officer shall pay to the county treasurer all state and county taxes collected, and within the same time shall make his statement of unpaid taxes upon real and personal property as required in section 55. [MCL 211.54.]

If taxes are not paid by February 15, they are "returned delinquent" from the township to the county. Payment of the "returned" delinquent taxes is, therefore, made to the county treasurer. The county treasurer must assure himself or herself that a township treasurer has properly accounted for all sums collected on property subject to ad valorem taxes and properly reported all property taxes remaining delinquent. MCL 211.55. With respect to the return of delinquent taxes made by the township treasurer to the county treasurer, section 55 provides in part:

> The county treasurer shall immediately compare the affidavits of the tax collecting officer with regard to the taxes collected and taxes remaining unpaid with the tax roll. [MCL 211.55.]

Only if the returns are correct are the township treasurer and the treasurer's sureties released from their bond. MCL 211.56.

Each treasurer collects taxes on behalf of the county as well as all local taxing units within the township. Under the statutory provisions detailed above, each treasurer has a fiduciary responsibility to each of those taxing units.

The activities and relationships discussed above make the township treasurer subordinate to the county treasurer in collecting county and state taxes; the county treasurer is given specified supervisory responsibilities over the township treasurer's performance of tax collecting duties.

In OAG, 1987-1988, No 6418, p 15 (January 13, 1987), the Attorney General addressed the incompatibility of the offices of county commissioner and city treasurer, under the same provisions of the General Property Tax Act:

It is the responsibility of the city treasurer each year to collect all taxes on real and personal property located in the city which are due to the county. MCL 211.54; MSA 7.98, provides:

> "Within 20 calendar days after the time specified in his warrant, the township treasurer or other collecting officer shall pay to the county treasurer all state and county taxes collected, and within the same time shall make his statement of unpaid taxes upon real and personal property as required in section 55."

The city treasurer is required to post a bond satisfactory to the county treasurer. MCL 211.43(2); MSA 7.84(2). If the city treasurer fails to pay to the county all taxes collected which are due to the county, the city may be held liable for the deficiency. *Ottawa County v City of Holland*, 269 Mich 192; 256 NW 851 (1934). The supervisory relationship between the city treasurer and the county treasurer on the annual settlement day is summarized in VerBurg, *Managing the Modern Michigan Township* (MSU, 1981), p 83. While that summary refers only to township treasurers, it is equally applicable to city treasurers in view of MCL 211.87 and 211.107(1); MSA 7.141 and 7.161(1). VerBurg states:

> "Settlement day is the time when township treasurers deliver a final report of collections for the season. The day is supposed to occur between March 1 and March 30, although it sometimes extends beyond that date. The process is largely one in which the township and county treasurers determine the balance owed to the county at that time. Generally, this will include the final distribution of regular collections and those received after March 1. The settlement will also involve a review of taxes being returned delinquent. The county treasurer then assumes responsibility for collecting taxes on real property.
>
> "Township treasurers may be somewhat intimidated with the matter of settlement; in effect, it is a kind of review of one's work by an outsider."

Thus, the city treasurer is, in effect, the county's agent in collecting the county's taxes on property located in the city, subject to the supervision of the county through the county treasurer and generally through the county board of commissioners. The overall responsibility of the county board of commissioners as to county business is set forth in MCL 46.11(p); MSA 5.331(p), which empowers the board to represent the county and to have the care and management of the property and business of the county if other provisions are not made. The supervision by the county of the city treasurer's collection activities is necessary to verify that all applicable county taxes are collected by the city treasurer and are transferred to the county.

It is my opinion, therefore, that county supervision of the city treasurer pertaining to the collection of county taxes by the city treasurer necessitates the conclusion that simultaneous holding of the offices of city treasurer and member of the county board of commissioners would be contrary to the prohibition against occupying incompatible offices in MCL 15.182; MSA 15.1120(122).

While the offices of county treasurer and township treasurer are clearly incompatible, the question here is whether that incompatibility extends to the office of deputy county treasurer.

MCL 48.37 requires that each county treasurer shall appoint "a" deputy who, in the absence of the treasurer from the office, is competent to perform all the duties of the office of treasurer. A person unable to perform all the duties of the office due to holding what would be an incompatible office would not be qualified for the appointment.

The collection of taxes assessed under the GPTA is a continuous activity. At all times, the county and township are involved in the collection of both delinquent and non-delinquent taxes. That activity extends beyond the activities discussed above through the ultimate forfeiture and foreclosure of properties for which taxes have not been paid. In most counties, the county treasurer is the foreclosing governmental unit. MCL 211.78. No month goes by that does not call for an accounting between each unit. The deputy county treasurer is required by law to be included in the tax collection process when the county treasurer is not available to perform the duties of the treasurer and, in general, assists the county treasurer in discharging all of the duties of that office. OAG, 1975-1976, No 4971, pp 411, 413 (April 20, 1976), recognized that a deputy county treasurer is subject to the same legislation as is applicable to the county treasurer. Accordingly, the incompatibility of the offices of county treasurer and township treasurer extends as well to the deputy county treasurer as well as to the county treasurer.

It is my opinion, therefore, that the offices of deputy county treasurer and treasurer of a township within the same county are incompatible.

MIKE COX
Attorney General

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

CITIES: Legality of ordinance allowing use of unmanned traffic monitoring device to

HOME RULE CITY ACT:

MICHIGAN VEHICLE CODE:

TRAFFIC RULES AND REGULATIONS:

An ordinance adopted by a city pursuant to its authority under the Home Rule City Act, 1909 PA 279, MCL 117.1 *et seq*, that allows the city to issue citations for civil infractions for disobeying a traffic control signal based on the photograph or video produced by an unmanned traffic monitoring device at a location other than a railroad grade crossing conflicts with the Michigan Vehicle Code, 1949 PA 300, MCL 257.1 *et seq*, and, thus, is invalid.

Opinion No. 7199

January 30, 2007

Honorable Barbara A. Farrah
State Representative
The Capitol
Lansing, MI 48909

You ask if an ordinance adopted by a city, pursuant to its authority under the Home Rule City Act, 1909 PA 279, MCL 117.1 *et seq* (Act), to allow the city to issue citations for civil infractions for disobeying a traffic control signal (red light) based on the photograph or video produced by an unmanned traffic monitoring device is valid.

The Constitution reserves to local units of government the authority to exercise reasonable control over streets and highways. Const 1963, art 7, § 29 provides in pertinent part:

> Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.[1]

Thus, the authority reserved to local units of government to exercise reasonable control over streets and highways is expressly made subject to other provisions of the Constitution. One such provision is Const 1963, art 7, § 22 in which cities and villages enjoy broad powers to adopt ordinances relating to municipal concerns, "subject to the constitution and law." *AFSCME v Detroit*, 468 Mich 388, 410; 662 NW2d 695 (2003).

Similarly, section 4j(3) of the Act, MCL 117.4j(3), authorizes home rule cities to adopt ordinances relating to their municipal concerns subject to the Constitution and law:

> Each city may in its charter provide:
>
> [F]or any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state.

Although home rule cities may adopt a code by passing an ordinance under their general police powers, a municipality is precluded from enacting an ordinance if the ordinance directly conflicts with the state statutory scheme addressing that subject or if the state statutory scheme pre-empts the ordinance by occupying the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance, even where there is no direct conflict between the two schemes of regulation. *People v Llewellyn*, 401 Mich 314, 322; 257 NW2d 902 (1977).

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[1] See also MCL 117.4h(1), which provides that each city may in its charter provide "[f]or the use, regulation, improvement and control of the surface of its streets, alleys and public ways, and of the space above and beneath them."

Section 4*l*(1) of the Act, MCL 117.4*l*(1), provides in pertinent part:

> Consistent with any of the following statutes and whether or not authorized by the city charter, the legislative body of a city may adopt an ordinance that designates a violation of the ordinance as a civil infraction and provides a civil fine for that violation:
>
> (a) The Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

In similar vein, the Revised Judicature Act, 1961 PA 236, MCL 600.101 *et seq,* provides in section 113, MCL 600.113:

> (1) As used in this act:
>
> (a) "Civil infraction" means an act or omission that is prohibited by a law and is not a crime under that law or that is prohibited by an ordinance and is not a crime under that ordinance, and for which civil sanctions may be ordered. Civil infraction includes, but is not limited to, the following:
>
> (i) A violation of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, designated as a civil infraction.
>
> (ii) A violation of a city, township, or village ordinance substantially corresponding to a provision of Act No. 300 of the Public Acts of 1949, if the ordinance designates the violation as a civil infraction.

Accordingly, a city operating under the Home Rule City Act may enact ordinances that are consistent with the Michigan Vehicle Code (the Code), 1949 PA 300, MCL 257.1 *et seq*.

The city in question has adopted an ordinance that allows a police officer or person appointed by a local district judge to issue a citation for a civil infraction for driving into an intersection after the traffic signal has turned red based on a review of photographic evidence obtained by an unmanned camera. Section 741 of the Michigan Vehicle Code, MCL 257.741, provides:

> A civil infraction action is a civil action in which the defendant is alleged to be responsible for a civil infraction. A civil infraction action is commenced upon the issuance and service of a citation as provided in section 742.

Section 742 of the Code, MCL 257.742, provides for the issuance of citations for civil infractions:

> (1) A police officer who witnesses a person violating this act or a local ordinance substantially corresponding to this act, which violation is a civil infraction, may stop the person, detain the person temporarily for purposes of making a record of vehicle check, and prepare and subscribe, as soon as possible and as completely as possible, an original and 3 copies of a written citation, which shall be a notice to appear in court for 1 or more civil infractions. If a police officer of a village, city, township, or county, or a police officer who is an authorized agent of a county road commission, witnesses a person violating this act or a local ordinance substantially corresponding to this act within that village, city, township, or county and that violation is a civil infraction, that police officer may pursue, stop, and detain the person outside the village, city, township, or county where the violation occurred for the purpose of exercising the authority and performing the duties prescribed in this section and section 749, as applicable.
>
> * * *
>
> (3) A police officer may issue a citation to a person who is a driver of a motor vehicle involved in an accident when, based upon personal investigation, the officer has reasonable cause to believe that the person is responsible for a civil infraction in connection with the accident. A police officer may issue a citation to a person who is a driver of a motor vehicle when, based upon personal investigation by the police officer of a complaint by someone who witnessed the person violating this act or a local ordinance substantially corresponding to this act, which violation is a civil infraction, the officer has reasonable cause to believe that the person is responsible for a civil infraction and if the prosecuting attorney or attorney for the political subdivision approves in writing the issuance of the citation.
>
> * * *
>
> (5) The officer shall inform the person of the alleged civil infraction or infractions and shall deliver the third copy of the citation to the alleged offender.
>
> (6) In a civil infraction action involving the parking or standing of a motor vehicle, a copy of the citation need not be served personally upon the defendant but may be served upon the registered owner by attaching the copy to the vehicle.

Section 605 of the Code, MCL 257.605, requires uniformity throughout the State for obedience to, the effects of, and the penalties for violating the traffic laws:

> (1) [Chapter VI[1]] and chapter VIII[1] apply uniformly throughout this state and in all political subdivisions and municipalities in the state. A local authority shall not

[1] Chapter VI addresses obedience to and effect of traffic laws and includes MCL 257.605.

> adopt, enact, or enforce a local law that provides lesser penalties or that is otherwise in conflict with this chapter or chapter VIII.
>
> (2) A local law or portion of a local law that imposes a criminal penalty for an act or omission that is a civil infraction under this act, or that imposes a criminal penalty or civil sanction in excess of that prescribed in this act, is in conflict with this act and is void to the extent of the conflict.

Those requirements are in contrast to section 667a of the Code, MCL 257.667a, which provides for the installation and use of unmanned traffic monitoring devices at railroad grade crossings, the use of a sworn statement of a police officer based upon inspection of photographs or videotape images produced by an unmanned traffic monitoring device, and service of the citation by first-class mail on the owner of the vehicle:

> (1) The . . . local authority having jurisdiction over a highway or street may authorize the installation and use of unmanned traffic monitoring devices at a railroad grade crossing with flashing signals and gates on a highway or street under their respective jurisdictions. . . .
>
> (2) Beginning 31 days after the installation of an unmanned traffic monitoring device at a railroad grade crossing described in subsection (1), a person is responsible for a civil infraction as provided in section 667 if the person violates a provision of that section on the basis of evidence obtained from an unmanned traffic monitoring device. . . .
>
> (3) A sworn statement of a police officer from the state or local authority having jurisdiction over the highway or street upon which the railroad grade crossing described in subsection (1) is located, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by an unmanned traffic monitoring device, shall be prima facie evidence of the facts contained therein. . . .
>
> * * *
>
> (5) Notwithstanding section 742, a citation for a violation of section 667 on the basis of evidence obtained from an unmanned traffic monitoring device may be executed by mailing by first-class mail a copy to the address of the owner of the vehicle as shown on the records of the secretary of state.

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[1] Chapter VIII addresses the penalties provided in the Code.

It is a well-established canon of legislative construction that the expression of one thing implies the exclusion of others not expressed – "*expressio unius est exclusio alterius*." *Taylor v Michigan Public Utilities Comm*, 217 Mich 400, 402-403; 186 NW 485 (1922); *Sebewaing Industries Inc v Village of Sebewaing*, 337 Mich 530, 548; 60 NW2d 444 (1953).

It is my opinion, therefore, that an ordinance adopted by a city pursuant to its authority under the Home Rule City Act, 1909 PA 279, MCL 117.1 *et seq*, that allows the city to issue citations for civil infractions for disobeying a traffic control signal based on the photograph or video produced by an unmanned traffic monitoring device at a location other than a railroad grade crossing conflicts with the Michigan Vehicle Code, 1949 PA 300, MCL 257.1 *et seq*, and, thus, is invalid.

Mike Cox
Attorney General

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

GOVERNOR: Length of term of office of Executive Director of Michigan Gaming Control

APPOINTMENTS: Board and manner of appointment to office

MICHIGAN GAMING CONTROL AND REVENUE ACT:

PUBLIC OFFICERS AND EMPLOYEES:

LEGISLATURE:

ADVICE AND CONSENT:

The Governor is authorized to appoint the Executive Director of the Michigan Gaming Control Board to serve a six-year term under section 4(8) of the Michigan Gaming Control and Revenue Act, MCL 432.204(8).

An individual appointed by the Governor as Executive Director of the Michigan Gaming Control Board under MCL 432.204(8) may not assume the duties of the office immediately upon executing the oath of office required by Const 1963, art 11, § 1 but rather must wait to assume the duties of the office until after the appointment is approved by the Senate by a record roll call vote.

Opinion No. 7200 February 23, 2007

Honorable Jennifer M. Granholm
Governor
The Capitol
Lansing, MI

You have asked two questions concerning the office of Executive Director of the Michigan Gaming Control Board. Your questions pertain to the length of the Executive Director's term of office and the process by which appointment to this office is approved by the Senate.

You first ask whether the Governor is authorized to appoint the Executive Director of the Michigan Gaming Control Board to the six-year term provided for in the applicable statute or is limited

by Const 1963, art 5, § 3 and OAG, 2005-2006, No 7178, p ___ (August 2, 2005), to appointing the Executive Director to a four-year term. Your letter indicates that you intend to fill a current vacancy in this office soon. This response, accordingly, has been prepared on an expedited basis.

The Michigan Gaming Control and Revenue Act (Act), MCL 432.201 *et seq,* is an initiated law that took effect on December 5, 1996. The Legislature substantially amended the Act in 1997 with the requisite supermajority vote by enacting 1997 PA 69. Section 4(1) of the Act establishes the Michigan Gaming Control Board, and section 4(2) describes its membership: "The board shall consist of 5 members . . . to be appointed by the governor with the advice and consent of the Senate . . . ." MCL 432.204(1) and (2). Under section 4(3): "The members shall be appointed for terms of 4 years." MCL 432.204(3). The Act also dictates that one member "shall be designated by the governor to be chairperson." MCL 432.204(2).

A different subsection of section 4 of the Act, MCL 432.204(8), establishes the position of Executive Director of the Board, a gubernatorial appointee who serves a six-year term of office and performs those duties assigned by the Board:

> The governor shall appoint the executive director of the board *to serve a 6-year term.* After the effective date of the act that added this subsection, the appointment of the executive director shall require the approval of the senate by a record roll call vote. The executive director shall perform any and all duties that the board shall assign him or her. The executive director shall be reimbursed for all actual and necessary expenses incurred by him or her in discharge of his or her official duties. The executive director shall keep records of all proceedings of the board and shall preserve all records, books, documents, and other papers belonging to the board or entrusted to its care. The executive director shall devote his or her full time to the duties of the office and shall not hold any other office or employment. A vacancy in the position of executive director shall be filled as provided in this subsection for a new 6-year term. [Emphasis added.]

Your first inquiry seeks to resolve whether the six-year term of office for the Executive Director established in MCL 432.204(8) violates the four-year limitation on "[t]erms of office of any board or

commission" created or enlarged after the effective date of the 1963 Constitution stated in Const 1963, art 5, § 3. That section provides, in its entirety:

> The head of each principal department shall be in a single executive unless otherwise provided in this constitution or by law. The single executives heading principal departments shall include a secretary of state, a state treasurer and an attorney general. When a single executive is the head of a principal department, unless elected or appointed as otherwise provided in this constitution, he shall be appointed by the governor by and with the advice and consent of the senate and he shall serve at the pleasure of the governor.
>
> When a board or commission is at the head of a principal department, unless elected or appointed as otherwise provided in this constitution, the members thereof shall be appointed by the governor by and with the advice and consent of the senate. The term of office and procedure for removal of such members shall be as prescribed in this constitution or by law.
>
> *Terms of office of any board or commission created or enlarged after the effective date of this constitution shall not exceed four years except as otherwise authorized in this constitution.* The terms of office of existing boards and commissions which are longer than four years shall not be further extended except as provided in this constitution. [Emphasis added.]

OAG No 7178 examined art 5, § 3 and determined that the above-italicized language in the third paragraph of art 5, § 3 applied to limit to four years the statutorily prescribed six-year terms of office of members of the Michigan Historical Commission, whose membership was enlarged after the effective date of Const 1963. Because the Michigan Gaming Control Board was created after the effective date of Const 1963, its members may likewise serve terms of no longer than four years.[1] The question then becomes whether, under the Michigan Gaming Control and Revenue Act, the Executive Director is a member of the Michigan Gaming Control Board. If the Executive Director *is* a member of the Board, his or her term of office may extend no longer than four years, and the six-year term provided for under the Act may not be constitutionally realized, but if the Executive Director is *not* a member of the Board, then appointment to this office is for the six-year term.

[1] As stated above, MCL 432.204(3) establishes a four-year term for members of the Board and is thus consistent with the mandate of art 5, § 3.

A review of all the provisions of the Act leads to the conclusion that the Executive Director is not a member of the Board and, therefore, may lawfully serve the six-year term established by the Act. The membership of the Board is established in a different subsection of the Act than is used to establish the office of Executive Director. The Executive Director is appointed for a six-year term, whereas members of the Board are appointed to a four-year term. The Executive Director's appointment requires approval of the Senate by a record roll call vote, whereas a board member's appointment requires the advice and consent of the Senate. The Board is given responsibility for the implementation of the Act, including the authority to decide casino license applications, promulgate rules, and provide for the levying and collection of fines and penalties for violations of the Act, MCL 432.204(17), whereas the Executive Director performs the duties that the Board assigns him or her. MCL 432.204(8). Moreover, other provisions of the Act refer to board members and the Executive Director as separate officers in the same sentence, providing further textual evidence that board members and the Executive Director serve in distinct positions. See e.g., MCL 432.204(11) and (13), and MCL 432.204d(22).[1] All these distinctions reflect that the Legislature did not intend the Executive Director of the Board to serve as a "member" of the Board.

Complete analysis of your first question, however, requires consideration of one additional issue. It must be observed that the third paragraph of art 5, § 3 is worded in such a way that, technically speaking, the four-year term-of-office limitation applies to "any board or commission" created or

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[1] MCL 432.204(11) requires the filing of financial disclosure statements by "[e]ach member of the board, the executive director, and each key employee as determined by the board." MCL 432.204(13) prohibits "[a] member of the board, executive director, or key employee" from holding certain interests and taking certain other actions. Under MCL 432.204d(22), the chairperson of the board must report certain actions he or she has taken or plans to take, after which "the board may direct the executive director to take additional or different action." The Michigan Gaming Control Board's administrative rules also distinguish between board members and the Executive Director. See, e.g., 1998 MR 6, R 432.1215.

enlarged after Const 1963 took effect, and not to the "the members of" any such board or commission.[1] Even though it is not a board or commission itself but rather its members who, logically, may serve a term of office, this could raise a question whether the third paragraph of art 5, § 3 is meant to apply to more than a board's or commission's members alone.

When interpreting a constitutional provision, the task is to give effect to the common understanding of the text:

> "A constitution is made for the people and by the people. *The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it.* 'For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, *the intent to be arrived at is that of the people*, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, *but rather that they have accepted them in the sense most obvious to the common understanding*, and ratified the instrument in the belief that that was the sense designed to be conveyed.' (Cooley's Const Lim 81)." *Traverse City School Dist v Attorney General,* 384 Mich 390, 405; 185 NW2d 9 (1971). [*Lapeer County Clerk v Lapeer Circuit Court*, 469 Mich 146, 155; 665 NW2d 452 (2003); brackets omitted.]

Courts usually examine the plain meaning of the provision's terms to derive the common understanding. *Wayne County v Hathcock,* 471 Mich 445, 468-469; 684 NW2d 765 (2004). While the intent of the people must be inferred from the language used, it is not the meaning of the particular words in the abstract or their strictly grammatical construction that governs. The words are to be applied to the subject matter and to the general scope of the provision, and they are to be considered in light of the general purpose sought to be accomplished by the provision. *White v Ann Arbor*, 406 Mich 554, 562; 281 NW2d 283 (1979) (citation omitted). In applying the rule of common understanding, the task is to search for "contextual clues" about a provision's meaning. *People v Nutt*, 469 Mich 565, 574 n 7; 677 NW2d 1 (2004). A provision's meaning may also be clarified by considering the circumstances

surrounding the provision's adoption and its intended purpose. *Federated Publications, Inc v Michigan State Univ Bd of Trustees*, 460 Mich 75, 85; 594 NW2d 491 (1999). But if the meaning of a provision is apparent from the plain language of its text, it is unnecessary to consider its history and the circumstances surrounding its adoption. *County Rd Ass'n of Michigan v Governor*, 474 Mich 11, 17; 705 NW2d 680 (2005).

Reading art 5, § 3 as a whole demonstrates that the phrase "[t]erms of office of any board or commission" refers to the terms of office of any board's or commission's constituent members. The first paragraph of art 5, § 3 refers to single executives serving as heads of principal departments. The second paragraph addresses boards or commissions that serve as heads of principal departments. That paragraph also specifically addresses members of those boards or commissions: they must be appointed by the Governor and their terms of office and procedure for their removal must be as prescribed in the constitution or by law.

Paragraph three then begins by placing the four-year limitation on the terms of office of any board or commission created after the effective date of the constitution. Given that the sentence immediately preceding this limitation addresses the terms of office and procedure for removal of *members* of boards and commissions, the interpretation that paragraph three also addresses members effectuates the sense best regarded as "most obvious to the common understanding." *Lapeer County Clerk,* 469 Mich at 155 (italics omitted). A "board" is comprised of its members, and any other interpretation would improperly assign a strained and "abstruse" meaning to the words of the provision. *Id.* Thus, art 5, § 3's reference to the term of office of the board means the term of office of its members.

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[1] Again, the pertinent text reads: "Terms of office of any board or commission created or enlarged after the effective date of

While the meaning of this provision is apparent from the language of its text when read in context, its history and the circumstances surrounding its adoption add further support to the conclusion that paragraph three of art 5, § 3 was directed solely at members of a board or commission. *County Rd Ass'n of Michigan*, 474 Mich at 17. Although not conclusive, the debates at the Constitutional Convention are the "most instructive tool for discerning the circumstances surrounding the adoption of [a] provision." *House Speaker v Governor,* 443 Mich 560*,* 580-581; 506 NW2d 190 (1993).

The Official Record indicates that the third paragraph of art 5, § 3 originated as part of a larger amendment to Committee Proposal 71. As initially introduced, the pertinent part of the amendment stated:

> "Approval of the governor [of an appointment made by a board or commission] shall not be required with respect to the chief executive officer of an appointed board or commission heading a principal department.
>
> No member of any board or commission created or enlarged after adoption of this constitution shall have a term longer than 4 years. The terms of members of existing boards and commissions, other than as provided in this constitution, which are greater than 4 years shall not be further extended." [2 Official Record, Constitutional Convention 1961, p 1871.]

Without doubt, those who introduced the amendment intended that it would apply only to members of boards or commissions.

The impact of this amendment was discussed at length in the Official Record. The first paragraph of the amendment, some delegates claimed, was directed primarily at the state board of education. *Id.,* at 1871 (statement by Delegate Durst). The second paragraph of the amendment more broadly applied to any new or enlarged board or commission and was aimed at giving the Governor some control over boards and commissions:

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this constitution shall not exceed four years." Const 1963, art 5, § 3.

> Now, if they have terms of more than 4 years, they may very well be in a position where they can act contrary to the policy or the philosophy of the governor, and we feel that where boards are heading principal departments, it is preferable that he have the appointive power over them, and that they be, in a sense, responsive to his general overall supervision; which would be much more difficult if the terms of the commissioners or board members exceed a 4 year period. [*Id.,* at 1871-1872 (statement by Delegate Hatch).]

Delegate Hatch later added,

> Now, where you have boards and commissions which the legislature may establish and give a term, we feel that they should not have a term longer than the term of the governor himself. The idea is to strengthen the position of the governor with respect to the boards and commissions in the executive branch. [*Id.,* at 1874.]

When this amendment first came to a vote, a majority of the delegates rejected it. *Id.*, at 1883. The following slightly different form of the amendment was later passed:

> "No member of any board or commission created or enlarged after adoption of this constitution shall have a term longer than 4 years. The terms of members of existing boards and commissions, other than as provided in this constitution, which are greater than 4 years shall not be further extended." [*Id.,* at 2205, 2206-2207.]

Thereafter, the provision was referred to the committee on style and drafting, which suggested the changes that removed the references to "members" in the provision. *Id.,* at 2742-2744.

In eventually adopting the change of "terms of office of *members*" to "terms of office of *boards or commissions*," it appears that the delegates did not perceive the shift in language as broadening the scope of the provision. (Emphasis added.) See *Id.,* at 1871 (statements of Delegate Durst and Delegate Hatch), 1874 (statement of Delegate Hatch), 1876 (statement of Delegate Martin), 1879 (statement of Delegate Faxon), and 2205 (statement of Delegate Durst) (all using "terms of office of members" and "terms of office of boards" interchangeably).[1]

[1] Moreover, at least one publication made available before the vote on the proposed constitution informed the ratifiers that this provision referred to "members." The Citizens Research Council of Michigan, in its publication "An Analysis of the

Because the phrase "[t]erms of office of any board or commission" in art 5, § 3 applies only to board members, it does not encompass the office of the Executive Director of the Michigan Gaming Control Board and has no effect on the statutorily prescribed six-year term of the Executive Director of the Michigan Gaming Control Board.

It is my opinion, therefore, in answer to your first question, that the Governor is authorized to appoint the Executive Director of the Michigan Gaming Control Board to serve a six-year term under section 4(8) of the Michigan Gaming Control and Revenue Act, MCL 432.204(8).

Your second question asks whether an individual appointed by the Governor as Executive Director of the Michigan Gaming Control Board may assume the duties of the office immediately upon executing the oath of office mandated by Const 1963, art 11, § 1[1] or must wait to assume the duties of the office until after the appointment is approved by the Senate by a record roll call vote.

Your question presents circumstances that arise after the effective date of 1997 PA 69, the act that added subsection 8 of section 4 to the Michigan Gaming Control and Revenue Act. It therefore requires examination of the following controlling provision of the Act: "After the effective date of the act that added this subsection, the appointment of the executive director shall require the approval of the senate by a record roll call vote." MCL 432.204(8). This phraseology for describing Senate approval of

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Proposed Constitution" (December 27, 1962), described this provision: "The term of office for any statutory board or commission 'created or enlarged' under the proposed constitution would be a maximum of four years, however. This feature would increase the governor's power to appoint *members* of such boards during his four-year term." *Id.,* at 3-4 (emphasis added).

a gubernatorial appointment appears to be unique to the Michigan Gaming Control and Revenue Act. Its interpretation presents an issue of first impression.

The fundamental rule of statutory construction is to give effect to the Legislature's intent. "If the intent is clear, and the statute is unambiguous, the statute must be read as the Legislature wrote it." *Dewan v Khoury*, 477 Mich 888, 889; 722 NW2d 215 (2006), citing *Weakland v Toledo Engineering Co, Inc,* 467 Mich 344, 347; 656 NW2d 175 (2003). Words and phrases must be read in context, and a statute must be read in its entirety. *Sweatt v Dept of Corrections*, 468 Mich 172, 179; 661 NW2d 201 (2003).

The words "approval of the senate" applicable to the appointment of the Executive Director are plain in stating a requirement that an appointment must be approved by the Senate, but this does not alone resolve the issue of timing at the heart of your question. When these words are read in full context, however, it is instructive to observe that they stand in contrast to the language used by the Legislature concerning appointment to membership on the Michigan Gaming Control Board, which requires "the advice and consent of the senate." Compare MCL 432.204(8) with MCL 432.204(2).

Const 1963, art 5, § 6 provides a constitutional definition of "appointment by and with the advice and consent of the senate":

> Appointment by and with the advice and consent of the senate when used in this constitution or laws in effect or hereafter enacted means appointment subject to disapproval by a majority vote of the members elected to and serving in the senate if such action is taken within 60 session days after the date of such appointment. Any appointment not disapproved within such period shall stand confirmed.

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[1] This provision requires all legislative, executive, and judicial officers, before entering upon the duties of their offices, to take and subscribe an oath to support the Constitution of the United States and this State and to faithfully discharge the duties

As explained in the Address to the People: "This procedure provides ample opportunity for the senate to render a negative judgment on appointees. At the same time, it permits appointments to become effective unless the senate is willing to go on record as rejecting the appointees. It prevents withholding of confirmation simply by failure to act on appointments." 2 Official Record, Constitutional Convention 1961, p 3379.

Thus, as discussed in numerous Attorney General opinions, the constitutional definition of "appointment by and with the advice and consent of the senate" squarely addresses the timing by which an appointee whose appointment is subject to advice and consent may assume the duties of office. Upon filing the oath of office, a person whose appointment to office by the Governor requires the advice and consent of the Senate may assume the duties of the office immediately and may continue to hold office unless within 60 session days following submission of the appointment to the Senate, the Senate rejects the appointment. See, e.g., OAG, 1983-1984, No 6120, pp 7, 9 (January 13, 1983), citing OAG, 1965-1966, No 4531, p 393 (December 27, 1966).

This approach represents a change from the practice that prevailed under the 1908 Constitution, under which an appointment requiring advice and consent of the Senate made by the Governor while the Senate was in session was not effective until confirmed, as explained in OAG, 1939-1940, pp 141, 142-143 (July 7, 1939). That opinion described the principle as "well established" that, "where the law requires the approval or confirmation of an appointment by a governing legislative body, the appointment is not complete until such approval or confirmation is made." *Id*., at 142 (citations omitted). See also OAG No 4531 at 401-405. This former practice is similar to that followed by the President of the United States pursuant to the appointing power conferred on him under the federal

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of their offices according to the best of their abilities.

constitution, under which an appointment was more in the nature of a nomination and approval by the Senate was a condition precedent to the complete investiture of the office. OAG No 4531 at 401-402.

Under this former practice, preventing the appointee from taking office until after the Senate had affirmatively granted approval created the potential for disruptive delays or, if the Senate chose not to act at all, the office remained vacant. The Attorney General noted in OAG No 4531 the "painstaking care with which the drafters of the Constitution of 1963 undertook to define the function of advice and consent of the senate" to reflect their concern over the "unsatisfactory practice in this regard which had developed under the Constitution of 1908." *Id*., at 405-406. The delegates to the Constitutional Convention cited preventing this delay as one reason for including the definition of advice and consent now found in art 5, § 6 of the 1963 Constitution. *Id.,* at 397-399, 405-406.

The question then becomes whether, by requiring the "approval" of the Senate in connection with the appointment of the Executive Director under MCL 432.204(8) instead of the "advice and consent" of the Senate, the Legislature meant for a different practice – and different timing – to apply than would have been required if the "advice and consent" words of art 5, § 6 had been used.[1] In construing statutes, it is presumed that the Legislature uses each word for a purpose. *Niles Twp v Berrien County Bd of Comm'rs*, 261 Mich App 308, 315; 683 NW2d 148 (2004). Similarly, it cannot be assumed "'that the Legislature inadvertently made use of one word or phrase instead of another.'" *Id.*, quoting *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000).

[1] Your request does not ask, and this opinion does not address, the constitutionality of a statutory requirement for legislative approval of an executive appointment in a manner involving other than "the advice and consent of the Senate." See Const 1963, art 5, § 6 and Const 1963, art 4, 38. It is axiomatic that statutes are entitled to a presumption of constitutionality. *Rohan v Detroit Racing Ass'n*, 314 Mich 326, 341-342; 22 NW2d 433 (1946).

In the case of MCL 432.204(8), the Legislature's purposeful selection of the statutory text under review is confirmed upon examining the relevant legislative history. Tracking the progress of the bill that became 1997 PA 69 through the legislative process reveals that the Legislature considered an amendment that would have required approval of the appointment of the Executive Director by advice and consent of the Senate (as with Board members) rather than by the approval of the Senate by roll call vote and that the amendment was rejected by a vote of 35 (yeas) to 71 (nays). See 1997 Journal of the House 1527-1528. Having rejected language that would have permitted the Executive Director appointee to take office immediately upon filing the constitutional oath, without a vote of approval by the Senate, and instead requiring an affirmative vote of Senate approval by record roll call vote, the words selected convey the intent of the Legislature and must be effectuated as written.

Moreover, because MCL 432.204(8) provides that "the *appointment* of the executive director shall require" the Senate's approval, the Legislature has indicated that, consistent with the rule that shaped practice under the 1908 Constitution in which "appointment by and with the advice and consent of the senate" was *not* defined, the appointee must first receive Senate approval by roll call vote as a condition precedent to the appointment becoming complete and effective. (Emphasis added.) The appointee cannot take office before the appointment is complete and, therefore, cannot take office until after having received the Senate's approval. While this represents a break from traditional practice, and carries with it the potential for the problems and delays the framers sought to prevent by adoption of art 5, § 6 in the 1963 Constitution, it is nevertheless the result that most faithfully enforces the plain text of MCL 432.204(8).[1]

[1] This office is advised that, from the time the vacancy in the office of Executive Director first arose to the present, the duties of the office have been performed by other employees or staff members of the Board and that all necessary operations have

It is my opinion, therefore, that an individual appointed by the Governor as Executive Director of the Michigan Gaming Control Board may not assume the duties of the office immediately upon executing the oath of office required by Const 1963, art 11, § 1 but rather must wait to assume the duties of the office until after the appointment is approved by the Senate by a record roll call vote.

MIKE COX
Attorney General

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continued. It is presumed that this status quo or an equivalent status that assures the continued operations of the Board will be maintained until such time as the vacancy in this office is filled.

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

ZONING: Compliance with Michigan Zoning Enabling Act

MICHIGAN ZONING ENABLING ACT:

The requirement in section 601(3) of the Michigan Zoning Enabling Act, MCL 125.3601(3), that a member of the zoning or planning commission be appointed to the zoning board of appeals does not require that a current member of the zoning board be removed to create a vacancy that may then be filled to satisfy the requirement. The city or village council may amend its zoning ordinance to increase the number of members on the zoning board of appeals either temporarily or permanently and fill the newly created position with the required zoning or planning commission member.

A member of a city or village zoning board of appeals who also serves as a member of the local unit's planning or zoning commission must abstain from voting on a matter being considered by the zoning board of appeals that he or she voted on as a member of the zoning or planning commission where the facts and circumstances associated with the particular decision under review make abstention necessary to satisfy the due process requirement of impartial decision making.

A city or village council may appoint a successor to the zoning board of appeals after the expiration of a member's term notwithstanding the passing of the one-month deadline imposed by section 601(9) of the Michigan Zoning Enabling Act, MCL 125.3601(9), but the council should complete the appointment process as soon as practicable thereafter. Where a city or village council fails to timely appoint a successor to the zoning board of appeals after the expiration of a member's term under MCL 125.3601(9), that member may continue to serve beyond the expiration of his or her term as a holdover member until a successor is appointed and qualified.

The requirement in section 601(9) of the Michigan Zoning Enabling Act, MCL 125.3601(9), for appointment of a successor on the zoning board of appeals within one month after the term of the preceding member has expired has no application to the filling of a mid-term vacancy by appointment to the zoning board of appeals by the city or village.

In order to comply with the 30-day deadline for appealing to the circuit court from a decision of a zoning board of appeals set forth in section 606(3) of the Michigan Zoning Enabling Act, MCL 125.3606(3), a party must file the appeal within 30 days of the date on which the zoning board of appeals certifies its decision in writing or the date on which it approves the minutes of the meeting at which its decision was made, whichever is earlier.

Appeals to the Court of Appeals from decisions by a circuit court on review of a decision of the zoning board of appeals may only be taken by application for leave to appeal to that court in accordance with MCR 7.203 and not as a matter of right.

The provisions as to the effective date of a zoning ordinance and for the publication of notice of its adoption set forth in section 401(6) and (7) of the Michigan Zoning Enabling Act, MCL 125.3401(6) and (7), will control over different requirements for the effective date of a city ordinance or for the publication of notice of its adoption set forth in a city charter.

A municipality may comply with the requirements in section 103(2) of the Michigan Zoning Enabling Act, MCL 125.3103(2), for giving notice to the occupants of structures within 300 feet of a property subject to certain zoning actions for which this type of notice is required, by either delivering a written notice in person to an occupant of each unit in such a structure, or by mailing a letter to one or more occupants of each unit in such a structure by name if known or addressed to the "occupant" if the name of an occupant is not known.

Opinion No. 7201 March 21, 2007

Honorable Gilda Z. Jacobs
State Senator
The Capitol
Lansing, MI 48909

Honorable Aldo Vagnozzi
State Representative
The Capitol
Lansing, MI 48909

You have asked eight questions concerning the new Michigan Zoning Enabling Act (MZEA), MCL 125.3101 *et seq*, which was adopted by the Legislature in 2006 PA 110, effective July 1, 2006. This act repealed the prior City and Village Zoning Act, the Township Zoning Act, and the County Zoning Act, and merged into one act these laws enabling counties, cities, villages, and townships to regulate land use and development.

Your first question may be restated as follows:

> Does the requirement in section 601(3) of the MZEA that members of the planning commission be appointed to the zoning board of appeals require a current member of the zoning board of appeals to be removed in order to make room for this newly mandated appointment of a member of the planning commission on the zoning board of appeals?

Section 601(3), MCL 125.3601(3), states:

> In appointing a zoning board of appeals, membership of that board shall be composed of not fewer than 5 members if the local unit of government has a population of 5,000 or more and not fewer than 3 members if the local unit of government has a

> population of less than 5,000. The number of members of the zoning board of appeals shall be specified in the zoning ordinance. One of the regular members of the zoning board of appeals shall be a member of the zoning commission or of the planning commission if the duties and responsibilities of the zoning commission have been transferred to the planning commission.

This section sets a minimum number of members of the zoning board of appeals to be appointed by the local unit of government, "not fewer than 5" or "not fewer than 3," depending on the local unit's population. Section 601(3) gives discretion to the city or village council to specify the number of members of the zoning board of appeals "in the zoning ordinance." If there are no current vacancies on the zoning board of appeals, a city or village council may comply with this requirement by amending its ordinance establishing its zoning board of appeals to enlarge the board's membership by one or more additional seats and by filling one of these new seats with the requisite member of the local unit's zoning or planning commission.[1] In addition, if the city or village council would prefer to keep the zoning board of appeals at its current size in the future, the council could provide for a temporary expansion in the membership of the zoning board of appeals to add a member of the planning or zoning commission without removing any current members.[2]

It is my opinion, therefore, in answer to your first question, that the requirement in section 601(3) of the Michigan Zoning Enabling Act, MCL 125.3601(3), that a member of the zoning or planning commission be appointed to the zoning board of appeals does not require that a current member of the zoning board be removed to create a vacancy that may then be filled to satisfy the requirement. The city or village council may amend its zoning ordinance to increase the number of

[1] Throughout this opinion, references to "planning commission" apply only to planning commissions to which the duties and responsibilities of the zoning commission have been transferred. See MCL 125.3601(3).

[2] As one example, the municipality could amend its ordinance to provide that membership is increased by one until such time as a vacancy occurs due to death or resignation.

members on the zoning board of appeals, on a temporary or permanent basis, and fill the newly created position with the required zoning or planning commission member.

Your second question may be restated as follows:

> Is a member of a zoning board of appeals who is also a member of a planning or zoning commission required to abstain from voting on a matter being considered by the zoning board of appeals that he or she has already voted on as a member of a planning or zoning commission?

Your question recognizes that, in the case of adjudications by local bodies whose members may hold other offices, a conflict of duties that violates due process may arise. In OAG, 1991-1992, No 6742, p 203 (December 4, 1992), this issue was addressed with respect to a similar requirement for counties that have zoning ordinances. OAG No 6742 concluded that due process requires that a member of a county zoning commission serving as the statutorily required member of a county zoning board of appeals refrain from participating in the review of any decision in which the member has previously participated as a member of the county zoning commission.

The opinion first noted that since membership was explicitly required by the statute there was no question to be raised about the incompatibility of the offices. The opinion then went on to explain that the right to an impartial decision maker is a required part of due process that must be afforded in administrative hearings, citing *Crampton v Dep't of State*, 395 Mich 347; 235 NW2d 352 (1975). See also *Milk Marketing Bd v Johnson*, 295 Mich 644; 295 NW 346 (1940). In *Crampton*, the Court surveyed a number of United States Supreme Court opinions in which decision makers were disqualified without a showing of actual bias where, based on the particular facts and circumstances present, "'experience teaches that the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable.'" *Id*., at 351. Among the situations identified as presenting that risk

is where the decision maker might have prejudged the case because of prior participation as an initial decision maker. See *Withrow v Larkin*, 421 US 35, 58; 95 S Ct 1456; 43 L Ed 2d 712 (1975). None of the cases surveyed in *Crampton* addressed the particular scenario presented in your question, however, nor has research disclosed any subsequent court cases directly on point.

Like the county zoning boards of appeals under review in OAG No 6742, city zoning boards of appeals, if authorized to do so by the city's zoning ordinance**,** may hear appeals from land use decisions made by the zoning or planning commission as to site plans, special land uses, and planned unit developments under sections 501 to 503 of the MZEA, MCL 125.3501-125.3503. Accordingly, to the extent review of an initial decision is mandated, a member of a city zoning or planning commission serving as the statutorily required member of a city zoning board of appeals may be called upon to participate in the review of a decision in which the member has previously participated as a member of the city zoning or planning commission. In the absence of details concerning a particular decision or action and the level of participation on either end of the decision making process, it is difficult to definitively assess whether a court would find the risk of unfairness in participating in the review of the initial decision constitutionally intolerable. The prudent course to follow under these circumstances, however, is to refrain from all participation in the review of the initial decision in order to assure the impartiality of the administrative process.

It is my opinion, therefore, in answer to your second question, that a member of a city or village zoning board of appeals who also serves as a member of the local unit's planning or zoning commission must abstain from voting on a matter being considered by the zoning board of appeals that he or she voted on as a member of the zoning or planning commission where the facts and circumstances

associated with the particular decision under review make abstention necessary to satisfy the due process requirement of impartial decision making.

Your third question may be restated as follows:

> What are the consequences of failing to appoint a successor to a seat on the zoning board of appeals if the appointment is not made within one month of that member's term expiring as required by section 601(9) of the MZEA?

Section 601(9) of the MZEA, MCL 125.3601(9), provides:

> A successor shall be appointed not more than 1 month after the term of the preceding member [of a zoning board of appeals] has expired.

While section 601(9) of the MZEA, MCL 125.3601(9)**,** provides that appointment of a successor on the zoning board of appeals "shall" occur within one month after the term of the preceding member has expired, the MZEA is silent as to the consequences that result if such an appointment is not made within the required time limit. The expectation, of course, is that an appointment resulting from the expiration of a term will be made within the one-month deadline, since it is presumed that public officials will discharge their statutory duties by acting in accordance with the law. *West Shore Community College v Manistee County Bd of Comm'rs*, 389 Mich 287, 302; 205 NW2d 441, 449 (1973).

But, in the absence of language that expressly precludes performance of an official duty after the specified time for performance has elapsed, the fundamental rules of statutory construction generally favor construing the time limit as directory rather than mandatory. *People v Yarema,* 208 Mich App 54, 57; 527 NW2d 27 (1994), citing 3 *Sutherland, Statutory Construction* (5th ed), § 57.19, pp 47-48. No such preclusive language is present in the MZEA. Thus, while every effort should be made to comply with the statutory timetable, where circumstances make compliance impossible, an appointment may

still be made after expiration of the one-month period. Of course, in the good faith discharge of public duties, the appointment should be made in as close a period of time as is practicable.

Moreover, it is perhaps worth observing as a practical matter that, in the absence of any legislative direction to the contrary, if a successor has not been appointed within the one-month deadline, the preceding member, if available and willing to serve, could continue membership on the board as a holdover until a successor is appointed and qualified. This conclusion is consistent with OAG, 1979-1980, No 5606, p 493 (December 13, 1979), which determined that, in the absence of a statutory provision to the contrary, a public officer holding over may continue to serve until a successor is appointed and qualified. Citing the decision of an evenly divided Court in *Attorney General ex rel McKenzie v Warner*, 299 Mich 172, 192; 300 NW 63 (1941), a Letter Opinion of the Attorney General explained the policy underlying this rule:

> The general rule is based upon the ground of public convenience and necessity to prevent an hiatus in the government pending the time of the appointment and qualification of a successor. It has also been held that, in the absence of any statutory provisions to the contrary, the public interest requires that public offices should be filled at all times, without interruption. [Letter Opinion of Attorney General Frank J. Kelley to Senator John M. Engler, dated June 3, 1985; citations omitted.]

Also supporting this conclusion is the statement in *Messenger v Teagan,* 106 Mich 654, 656; 64 NW 499 (1895) that "[w]hile there is some conflict in the decisions, the better doctrine is that, where the law does not expressly or by necessary implication prohibit, officers hold over until their successors are duly elected and qualified."

It is my opinion, therefore, in answer to your third question, that a city or village council may appoint a successor to the zoning board of appeals after the expiration of a member's term notwithstanding the passing of the one-month deadline imposed by section 601(9) of the Michigan Zoning Enabling Act, MCL 125.3601(9), but the council should complete the appointment process as

soon as practicable thereafter. Where a city or village council fails to timely appoint a successor to the zoning board of appeals after the expiration of a member's term under MCL 125.3601(9), that member may continue to serve beyond the expiration of his or her term as a holdover member until a successor is appointed and qualified.

Your fourth question asks whether section 601(9) of the MZEA mandates the same one-month deadline for a city council to fill a vacated seat on a zoning board of appeals for the remainder of the member's term when a vacancy occurs prior to the expiration of a term.

Generally, section 601(9) of the MZEA, MCL 125.3601(9), specifies that terms of membership on a zoning board of appeals are for three years. This section does not specify a deadline for the filling of a mid-term vacancy, but it does state that "[v]acancies for unexpired terms shall be filled for the remainder of the term." If a statute's language is clear and unambiguous, it is assumed that the Legislature intended its plain meaning, and the statute is enforced as written. *People v Stone,* 463 Mich 558, 562; 621 NW2d 702 (2001). Given the language of the statute, there is no basis for implying a 30-day deadline for the filling of mid-term vacancies when the language of section 601(9) of the MZEA, MCL 125.3601(9) does not set forth a deadline for the filling of such vacancies.

It is my opinion, therefore, in answer to your fourth question, that the requirement in section 601(9) of the Michigan Zoning Enabling Act, MCL 125.3601(9), for appointment of a successor on the zoning board of appeals within one month after the term of the preceding member has expired has no application to the filling of a mid-term vacancy by appointment to the zoning board of appeals by a city or village council.

Your fifth question asks whether the 30-day deadline for filing an appeal of a decision of the zoning board of appeals to the circuit court runs from the date the zoning board of appeals certifies its decision in writing or from the date when the zoning board of appeals certifies the minutes of the meeting at which its decision was made.

Section 606(3) of the MZEA, MCL 125.3606(3), states the following regarding appeals to the circuit court from decisions of a zoning board of appeals:

> An appeal under this section shall be filed within 30 days after the zoning board of appeals certifies its decision in writing or approves the minutes of its decision.

The plain language of the statute provides that the 30-day time period for filing an appeal begins to run when either of two events occurs: 1) certification of the decision; or 2) approval of the minutes recording the decision. Depending on local practice, a zoning board of appeals may or may not certify its decision in writing, but it is required to review and approve the minutes of its meetings. See section 9 of the Open Meetings Act, MCL 15.269. Accordingly, the 30-day time period for filing an appeal begins to run from the date on which the zoning board of appeals certifies its decision in writing or approves the minutes of the meeting at which it made the decision, whichever comes first.

This construction of the statute is consistent with the general rules of administrative law. Appeals of administrative decisions to the circuit court are governed by MCR 7.101 and MCR 7.103. See MCR 7.104. With regard to the time period for filing a claim of appeal, the Michigan Supreme Court has held that the period begins to run on the date of actual entry of the order. *General Electric Credit Corp v Northcoast Marine, Inc*, 402 Mich 297, 300; 262 NW2d 660 (1978), *superseded on other grounds*. MCR 2.602(A) provides that the "date of signing of an order or judgment is the date of entry." Approval of the minutes of a meeting at which a final administrative decision is made can serve as the

date of entry of the order for purposes of MCR 7.101 and MCR 2.602(A). *Davenport v City of Grosse Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400, 405; 534 NW2d 143 (1995). In the case of an appeal from a decision of the zoning board of appeals, MCL 125.3606(3) provides that the 30-day appeal period begins to run with the certification of the board's written decision or upon approval of the minutes of its decision. Thus, either the certification of the written decision or approval of the minutes constitutes the entry of an order and begins the 30-day statutory appellate period.

It is my opinion, therefore, in answer to your fifth question, that, in order to comply with the 30-day deadline for appealing to the circuit court from a decision of a zoning board of appeals set forth in section 606(3) of the Michigan Zoning Enabling Act, MCL 125.3606(3), a party must file the appeal within 30 days of the date on which the zoning board of appeals certifies its decision in writing or the date on which it approves the minutes of the meeting at which its decision was made, whichever is earlier.

Your sixth question asks whether appeals to the Court of Appeals of decisions by a circuit court on review of a decision of a zoning board of appeals are now by right rather than by leave as your letter indicates was the case under past practice. An appeal by right is one in which the appellant has a right to be heard by the reviewing court, whereas an appeal by leave is one in which the reviewing court has the discretion to deny the appellant's request to be heard.

MCR 7.203(A)(1)(a) provides that the Court of Appeals has jurisdiction of an appeal of right filed from a final order or judgment of the circuit court "except" a judgment or order of the circuit court "on appeal from any other court or tribunal." MCR 7.203(A)(2) also provides that the Court of Appeals has jurisdiction of an appeal of right from a judgment or appeal of a court "from which appeal of right to the Court of Appeals has been established by law or court rule."

Section 606(3) of the MZEA, MCL 125.3606(3), states that "[a]n appeal may be had from the decision of any circuit court to the court of appeals." No provision in the MZEA, including MCL 125.3606(3), specifies that appeals of the zoning decisions of the circuit court shall be "of right" to the Court of Appeals. Research discloses no statute or court rule providing that appeals of the zoning decisions of the circuit court sitting on review of the decisions of zoning boards of appeal shall be by right to the Court of Appeals. In addition, "unless an appeal of right has been categorically established by law or court rule, appeal is by leave." *Watt v Ann Arbor Bd of Education*, 234 Mich App 701, 705; 600 NW2d 95 (1999).

It is my opinion, therefore, in answer to your sixth question, that appeals to the Court of Appeals from decisions by a circuit court on review of a decision of the zoning board of appeals may only be taken by application for leave to appeal to that court in accordance with MCR 7.203 and not as a matter of right.

Your seventh question asks whether the provisions regarding the effective date of a zoning ordinance and the requirement for publication of a notice of its adoption set forth in section 401(6) and (7) of the MZEA will control even if a city charter imposes other requirements for effective dates and the publication of notice of adoption of ordinances.

Regarding any date, deadline, or requirement set forth in the MZEA, including those about which you inquire and related provisions for referendum petitions and elections in section 402, MCL 125.3402, the provisions of the MZEA control over any conflicting requirements of a city charter. This result is mandated by section 36 of the Home Rule City Act, MCL 117.36, which states that "[n]o provision of any city charter shall conflict with or contravene the provisions of any general law of the

state." Const 1963, art 7, § 22 provides with regard to the powers of cities and villages: "Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law." It should be noted, however, that section 401(6), MCL 125.3401(6), expressly authorizes a city council to postpone the effective date of a zoning ordinance from the seventh day after publication of notice of its adoption to such later date as may be specified by the city council. In the exercise of its judgment, a city council may wish to select the effective date of any zoning ordinance or zoning amendment to be consistent, as much as it determines to be feasible, with its charter requirements for city ordinances that would otherwise be applicable in that city.

It is my opinion, therefore, in answer to your seventh question, that the provisions as to the effective date of a zoning ordinance and for the publication of notice of its adoption set forth in section 401(6) and (7) of the Michigan Zoning Enabling Act, MCL 125.3401(6) and (7), will control over conflicting requirements for the effective date of a city ordinance or for the publication of notice of its adoption set forth in a city charter.

Your eighth question asks what steps a municipality should take to comply with the requirement in section 103(2) of the MZEA of providing notice of zoning applications to the occupants of all structures located within 300 feet of a property that is the subject of certain zoning proceedings.

Section 103(2) of the MZEA, MCL 125.3103(2), provides:

> Notice shall also be sent by mail or personal delivery to the owners of property for which approval is being considered. Notice shall also be sent to all persons to whom real property is assessed within 300 feet of the property and to the *occupants* of all structures within 300 feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction. [Emphasis added.]

Although it may be prudent for a municipality to consult with its attorney regarding the particular details that may apply in a given situation, a municipality may comply with the notice requirements of section 103(2) by delivery of a written notice in person or by the sending of written notice by mail. As indicated in your letter, section 103(3) permits letters to be addressed to "occupant" if the name of an occupant of a structure is not known. MCL 125.3103(3) (stating "[i]f the name of the occupant is not known, the term 'occupant' may be used in making notification under this subsection").

It is my opinion, therefore, in answer to your final question, that a municipality may comply with the requirements in section 103(2) of the Michigan Zoning Enabling Act, MCL 125.3103(2), for giving notice to the occupants of structures within 300 feet of a property subject to certain zoning actions for which this type of notice is required or by either delivering a written notice in person to an occupant of each unit in such a structure, or by mailing a letter to one or more occupants of each unit in such a structure by name if known or addressed to the "occupant" if the name of an occupant is not known.

MIKE COX
Attorney General

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

CONST 1963, ART 1, § 26: Constitutionality of City's construction policy that provides bid discounts on the
DISCRIMINATION: basis of race or sex

PUBLIC CONTRACTING:

Const 1963, art 1, § 26 prohibits the implementation or application of the City of Grand Rapids' bid discount process set forth in Section 5.1(A)(1) of the Administrative Guidelines promulgated pursuant to City Policy 600-12 because the process grants preferential treatment to persons or groups based on race, sex, color, ethnicity, or national origin. Art 1, § 26 does not, however, prohibit the City from maintaining a bid discount process as long as the City amends the process to remove reliance on the unconstitutional factors of race, sex, color, ethnicity, or national origin.

Opinion No. 7202 April 9, 2007

Honorable Fulton J. Sheen
State Representative
The Capitol
Lansing, MI 48909

You have asked whether a construction policy adopted by the City Commission of Grand Rapids on January 23, 2007, comports with a recent amendment to the Michigan Constitution that prohibits discrimination against or the granting of preferential treatment to persons or groups on the basis of race, sex, color, ethnicity, or national origin in the operation of public contracting. See Const 1963, art 1, § 26, a copy of which is appended to this opinion.[1]

The policy is entitled "City Commission Policy No. 600-12" of the City of Grand Rapids, the subject of which is an "Equal Business Opportunity-Construction Policy." The policy's stated purpose is

[1] The January 23, 2007, minutes for the City Commission of Grand Rapids report that the policy was adopted by resolution and given immediate effect. (City Commission of Grand Rapids, January 23, 2007, Minutes, Item No 75897.)

to "ensure non-discrimination in the performance and administration of City contracting and subcontracting" and to provide "access and equal opportunity to do business with the City." The policy applies to contractors submitting bids to the City of Grand Rapids or to others, regarding construction projects of $10,000 or more, financed in whole or in part with city, state, or federal funding, unless otherwise regulated.[1] The policy further provides that "Administrative Guidelines" shall be promulgated to implement the construction policy and shall be used in the "interpretation and application of this Policy."

The administrative guidelines promulgated pursuant to the construction policy contain various sections; however, you have expressed a specific concern about section 5.1(A)(1), regarding bid discounts for contractors who utilize particular subcontractors. (Administrative Guidelines for Equal Business Opportunity-Construction Policy ("Guidelines"), Section 1.1(A)(1).)[2]

> Section 5.1, ELIGIBILITY FOR BID DISCOUNTS, provides in relevant part:
>
> A. Diversity
>
> 1. Supplier Diversity: Construction bids may be discounted when *certified DBE*, subcontractor participation is voluntarily obtained by a contractor on a City construction project. Once a bid has been received and opened, the City Engineering Department shall apply a discount to bids based on the original bid amount and the percent of *certified DBE* subcontractor participation reported in the bid documents. The discounted bid will be used in the selection process for the project and the recommendation for award. . . . [Guidelines, Section 5.1(A)(1); emphasis added.]

[1] Art 1, § 26(4) provides an exception for actions that must be taken to maintain eligibility for federal programs or federal funding that is not addressed in this opinion because the policy also applies to city- and state-financed projects.

[2] "Bid discounts" are defined as a "business incentive practice allowing an original bid to be reduced by a certain percentage for having engaged in activities that embrace the Mission Statement and Sustainability Vision Statement of the City with regard to diversity, strong economy, enriched lives**,** partnerships and regional equity and balanced with nature." (Guidelines, Section 2.1(2).) "The discounted bid will be used in the selection process for the project and the recommendation for award. However, the original bid amount will be the basis for contract award." (Guidelines, Section 5.1(A)(1).) Section 5.1(A) of the guidelines authorizes another type of bid discount, where a contractor may receive a 5% bid discount by bidding as a joint venture with an approved DBE. (Guidelines, Section 5.1(A)(2).) The analysis set forth in this opinion applies with equal force to that bid discount process.

A "DBE" is defined as a "Disadvantaged Business Enterprise," which means:

> [A] business concern, which is at least 51% owned by one or more socially and economically disadvantaged individuals (as defined by the U.S. Small Business Administration), or in the case of any publicly owned business, at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
>
> *For purposes of these Guidelines, DBEs may be further identified as minority, women and non-minority/women business enterprises*. [Guidelines, Section 2.1(10); emphasis in original.][1]

City officials advise that the City elected to define and identify a "DBE" by using the federal regulations set forth in 13 CFR 124.103-124.104, regarding the Small Business Administration (SBA), and 49 CFR 26.61-26.73 and 26.81-26.91, pertaining to the United States Department of Transportation.

The SBA defines "socially disadvantaged individuals" in the following way:

> (a) General. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. . . .
>
> (b) Members of designated groups. (1) *There is a rebuttable presumption that the following individuals are socially disadvantaged*: Black Americans; Hispanic Americans; Native Americans . . . ; Asian Pacific Americans . . . ; Subcontinent Asian Americans . . . ; and members of other groups designated from time to time by SBA according to procedures set forth at paragraph (d) of this section. . . . [13 CFR 124.103(a) – (b) (emphasis added).]

13 CFR 124.103(c) provides that individuals *not* belonging to one of the identified groups "must establish individual social disadvantage by a preponderance of the evidence." The SBA defines "economically disadvantaged individuals" as "*socially disadvantaged individuals* whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit

opportunities as compared to others in the same or similar line of business who are not socially disadvantaged." 13 CFR 124.104(a) (emphasis added). Thus, to be accorded a designation as "economically disadvantaged," a person must first show that he or she is "socially disadvantaged."

49 CFR Part 26 are regulations promulgated by the United States Department of Transportation for implementing the participation by DBEs in financial assistance programs. 49 CFR 26.67(a)(1) establishes "certification standards" and "what rules determine social and economic disadvantage" by providing:

> (a) Presumption of disadvantage. (1) You must *rebuttably presume* that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, *are socially and economically disadvantaged individuals*. [Emphasis added.]

Although this language gives the appearance of according a presumption of economic disadvantage to women and minorities, under the regulation those individuals must submit a notarized statement that their personal net worth does not exceed $750,000. 49 CFR 26.67(a)(2)(i).

49 CFR 26.67(d) provides that with respect to firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged, "a case-by-case determination" must be made regarding "whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. . . . [T]he applicant firm has the burden of demonstrating . . . by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged." 49 CFR 26.67(d).[2]

---

[1] The Guidelines then further define the terms "Minority," "Minority Business Enterprise (MBE)," "Women Business Enterprise (WBE)," and "Non-MWBE," which is a "business concern that is not a MBE or WBE." (Guidelines, Section 2.1(16)-(19).)

[2] The Guidelines refer to a "Certified DBE." "Certified" or "Certification" is defined as "[t]he process designated agencies utilize to determine whether businesses meet eligibility criteria as bondafide" DBEs, MBEs or WBEs. (Guidelines, Section 2.1(4).) Similarly, "Qualified As Certified" means the process whereby the Equal Opportunity Department verifies

The guidelines set forth a graduated scale of discounts ranging from 1% to 5% based on the percentage of DBE participation in the bid (Guidelines, Section 5.1(A)(1)(a)):

Certified DBE Subcontractor Participation	Discount Percentage
1.0 - 2.5%	1.0%
2.51 - 5.0%	1.5%
5.01 - 7.5%	2.0%
7.51 – 10.0%	2.5%
10.01 – 15.0%	3.0%
15.01 – 18.0%	4.0%
18.01%+	5.0%

Thus, the City's guidelines, by using the selected definitions, provide that a contractor may receive a bid discount by using DBEs owned or operated by "women," "Black Americans," "Hispanic Americans," "Native Americans," and persons of other listed ethnic groups, who are "rebuttably presum[ed]" to be "socially disadvantaged individuals."[1] Under the guidelines, the amount of the discount is directly related to the percentage of DBE subcontractor participation, i.e. the percentage of the total dollar value of the contract work that will be performed by DBEs. The greater the percentage of DBE participation, the higher the bid discount will be. For purposes of selecting the lowest bidder to

businesses are certified by designated agencies to be a bonafide DBE, MBE or WBE." (Guidelines, Section 2.1(24).) City officials confirmed that the City's Equal Opportunity Department does not "certify" subcontractors as DBEs. Rather, the Department verifies whether a subcontractor has received DBE certification from a designated agency – the Michigan Department of Transportation, other state United States Department of Transportation certification programs, or the SBA, which agencies utilize the rebuttable presumption based on race and sex for DBE certification. Although the City does not perform the certification, the City incorporates the presumption in favor of women and minorities by adopting the definitions of DBE from these other sources.

[1] The fact that women and minorities are not accorded a presumption of economic disadvantage is of no consequence in light of the definition of "economically disadvantaged individual," which first requires that an individual be socially disadvantaged. An individual who cannot prove social disadvantage necessarily fails to prove economic disadvantage.

receive award of the contract, the higher the bid discount, the lower will be the price of the bid used to select the low bidder, thereby favoring those bidders using DBEs.[1]

Accordingly, the guidelines provide an advantage to contractors who make greater use of DBE subcontractors, compared to contractors who make less or no use of DBE subcontractors. Eligibility of a subcontractor to become a DBE relies on definitions of "socially and economically disadvantaged" that rebuttably presume that women, certain racial and ethnic minorities, and persons of certain national origin are socially disadvantaged, while all other socially and economically disadvantaged persons must prove that status by a preponderance of the evidence. The question is whether this policy constitutes "preferential treatment" in public contracting on account of race, ethnicity, national origin, or sex in violation of art 1, § 26.

In November 2006, the people of Michigan voted on a proposed amendment to the State Constitution, commonly known as Proposal 06-2 or Proposal 2. The amendment passed by a margin of 58% to 42%.[2] Proposal 2, now Const 1963, art 1, § 26, provides in relevant part:

> (2) The state shall not *discriminate against*, *or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting*.
>
> (3) *For the purposes of this section "state" includes*, but is not necessarily limited to, the state itself, *any city*, county, any public college, university, or community college, school district, or other political subdivision or governmental instrumentality of or within the State of Michigan not included in subsection 1. [Emphasis added.]

[1] The guidelines provide that in cases where bids, including discounted bids, are the same, the "recommended award shall be the bid with the lowest original bid amount; however, the City reserves the right to award a contract in the City's best interest, and therefore, may select a bidder other than the lowest." (Guidelines, Section 5.2(B).)

[2] See http://miboecfr.nictusa.com/election/results/06GEN/90000002.html.

This section took effect on December 23, 2006, and applies to actions taken after its effective date.[1] Accordingly, by its plain language, art 1, § 26 applies to the policy adopted by the City of Grand Rapids on January 23, 2007.

There are three rules for construing constitutional provisions. As stated by the Michigan Supreme Court in *Wayne County v Hathcock*, 471 Mich 445, 468; 684 NW2d 765 (2004), the rule of common understanding constitutes the first rule of constitutional construction:

> [T]he primary objective of constitutional interpretation is to realize the intent of the people by whom and for whom the constitution was ratified.
>
> This Court typically discerns the common understanding of constitutional text by applying each term's plain meaning at the time of ratification. But if the constitution employs technical or legal terms of art, "we are to construe those words in their technical, legal sense."

The second rule is that, to clarify the meaning of a constitutional provision where the meaning may be questioned, the circumstances surrounding the adoption of a constitutional provision and the purpose sought to be accomplished may be considered. *Traverse City School Dist v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971). If the constitutional language is clear, however, reliance on extrinsic evidence is inappropriate. *American Axle & Mfg, Inc v City of Hamtramck*, 461 Mich 352, 362; 604 NW2d 330 (2000). Finally, under the third rule for construing a constitutional provision, "wherever possible an interpretation that does not create constitutional invalidity is preferred to one that does." *Traverse City School Dist*, 384 Mich at 406.

Art 1, § 26 states that a city "shall not *discriminate against,* or grant *preferential treatment to*, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of . . . public contracting." (Emphasis added.) These terms are not ambiguous and can be understood in a

[1] See Const 1963, art 12, § 2, and art 1, § 26(8).

common sense.[1] To "discriminate against" means to "make a difference in treatment" that is unfavorable to the person or group.[2] "Preferential treatment" may be defined as "showing preference" in the treatment of a person or group.[3] The word "preference" can be commonly understood to mean "the act, fact, or principle of giving advantages to some over others."[4] Notably, this meaning is consistent with the technical or legal definitions that have been accorded the term "preference."[5] The term "treatment" is self-explanatory but can be understood as how something or someone is handled or dealt with.[6] Thus, the term "preferential treatment" as used in art 1, § 26 can be understood as the act or fact of giving a favorable advantage to one person or group over others based on race, sex, color, ethnicity, or national origin. By using the terms "discriminate against" and "grant preferential treatment to," art 1, § 26 prohibits both the prejudicial treatment of a person and its counterpart – the favorable treatment of a person or group – on account of these classifications. The meaning of this language is clear; therefore, there is no need to examine the circumstances surrounding the adoption of this constitutional provision or the purpose sought to be accomplished. *Traverse City School Dist,* 384 Mich at 405. See also *National Pride at Work v Governor*, 2007 Mich App LEXIS 240; ___ Mich App ___; ___ NW2d ___

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[1] It is appropriate to consult dictionary definitions existing at the time the people ratified a constitutional amendment in order to determine the common meaning of the terms adopted. See, e.g., *Studier v Michigan Public School Employees' Retirement Bd*, 472 Mich 642, 653; 698 NW2d 350 (2005).

[2] See http://www.m-w.com/dictionary/discriminate. See also *Merriam-Webster's Collegiate Dictionary, 11th Edition* (2003), p 358, "discriminate" means "to make a difference in treatment or favor on a basis other than individual merit <in favor of your friends> <against a certain nationality>."

[3] See http://www.m-w.com/dictionary/preferential. See also *Merriam-Webster's Collegiate Dictionary, 11th Edition* (2003), p 979, "preferential" means "showing preference."

[4] See http://www.m-w.com/dictionary/preference. See also *Merriam-Webster's Collegiate Dictionary, 11th Edition* (2003), p 979, "preference" means "the act, fact, or principle of giving advantages to some over others."

[5] See Black's Law Dictionary, 8th Ed, p 1217, "preference" means "[t]he act of favoring one person or thing over another; the person or thing so favored." Courts have associated the term "preference" or "preferential treatment" with the conferring of an advantage. See, e.g., *Grutter v Bollinger*, 539 US 306; 123 S Ct 2325; 156 L Ed 2d 304 (2003); *Regents of Univ of Cal v Bakke*, 438 US 265; 98 S Ct 2733; 57 L Ed 2d 750 (1978); *Lewis v Michigan*, 464 Mich 781, 783; 629 NW2d 868 (2001).

[6] See http://www.m-w.com/dictionary/treating. See also *Merriam-Webster's Collegiate Dictionary, 11th Edition* (2003), p 1333, "treatment" means "the act or manner or an instance of treating someone or something."

(2007). Moreover, this interpretation does not create constitutional invalidity. *Traverse City School Dist,* 384 Mich at 406.

While the City's process does not establish a "quota" or participation "goal" as those terms are commonly understood, the policy does "discriminate against, [and] grant preferential treatment to, [an] individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of . . . public contracting." Const 1963, art 1, § 26.

That is, the bid discount process gives a benefit to the bidder by granting a bid discount based on the percentage of participation by subcontractors that qualify as DBEs – defined in terms of race, sex, ethnicity, and national origin. Where a bidder successfully obtains a contract as a result of a discount, both the bidder and its DBE subcontractors will receive the financial benefit of the contract, while other bidders and their non-DBE subcontractors will be denied the financial benefit of the contract. It is the status of the subcontractors as DBEs that will be relied upon to confer the favorable treatment of the bid discount.

The bid discount provision grants an advantage or "preference" based on race, sex, ethnicity, and national origin to minority- and women-owned subcontractors, who are entitled to a presumption that they are socially disadvantaged for purposes of acquiring DBE status. The ability of socially and economically disadvantaged persons to qualify their business as a DBE is expressly related to their membership in one of the designated groups. For DBEs, the City accords women and minorities the presumption that they are socially disadvantaged, while all other socially and economically

disadvantaged persons must bear the burden of proving their status by a preponderance of the evidence.[1] Although it is possible that a non-minority/non-women-owned subcontractor could qualify as a DBE under the guidelines and incorporated definitions, the presumption in favor of women and the designated minorities and ethnic groups forces these individuals to compete for such status on an *unequal* basis. These are the kinds of preferences that art 1, § 26 prohibits. Consequently, insofar as the policy provides a bid discount based on the DBE status of subcontractors, the City's policy as implemented by the Administrative Guidelines violates the plain language of art 1, § 26 and is unconstitutional.

This conclusion is consistent with the decisions by California courts interpreting Cal Const, art 1, § 31, after which Proposal 2 was modeled.[1] Section 31 contains a prohibition identical to Const 1963, art 1, § 26(2) that "[t]he state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of . . . public contracting." Cal Const, art 1, § 31(a).

In *Hi-Voltage Wire Works, Inc v City of San Jose*, 12 P3d 1068 (2000), the California Supreme Court interpreted this prohibition against "discrimination" and granting "preferential treatment" in the operation of public contracting and accorded these terms their plain and ordinary meaning: "'Discriminate' means 'to make distinctions in treatment; show partiality (*in favor of*) or prejudice (*against*)' . . . 'preferential' means giving 'preference,' which is 'a giving of priority or advantage to one

[1] Indeed, the term "socially and economically disadvantaged" is not race-neutral because of the underlying rebuttable presumptions. See *Rothe Dev Corp v United States DOD,* 324 F Supp 2d 840, 844 (D Tex 2004), rev'd on other grounds 413 F3d 1327 (CA 10, 2005); *Sherbrooke Turf, Inc v Minn Dep't of Transp*, 345 F3d 964, 969 (CA 8, 2003) (holding that although the program confers benefits on "socially and economically disadvantaged" individuals, a term which is race-neutral, strict scrutiny applies because the statute presumes minorities are in that class).

person . . . over others.'" *Hi-Voltage Wire Works*, 12 P3d at 1082 (internal citations omitted). The *Hi-Voltage* Court thereafter struck down the City of San Jose's contracting program that required contractors bidding on city projects to utilize a specified percentage of minority or women subcontractors.

The Court concluded that this program violated the plain language of Cal Const, art 1, § 31. The Court observed that the participation component authorized or encouraged "what amount[ed] to discriminatory quotas or set-asides, or at least race and sex-conscious numerical goals." *Hi-Voltage, Inc*, 12 P3d at 1084. "A participation goal differs from a quota or set-aside only in degree; by whatever label, it remains 'a line drawn on the basis of race and ethnic status' as well as sex." *Hi-Voltage, Inc*, 12 P3d at 1084 (internal citations omitted). The Court concluded that such a goal ran "counter to the express intent . . . of Proposition 209." *Hi-Voltage, Inc*, 12 P3d at 1084. See also *Connerly v State Personnel Bd*, 112 Cal Rptr 2d 5 (Cal App, 2001), where the California Court of Appeals invalidated several state statutory schemes as according preferential treatment in violation of Cal Const, art 1, § 31. The City of Grand Rapids' bid discount process also confers specific benefits on the basis of an impermissible classification like the policy of the City of San Jose; consequently the rationale set forth in *Hi Voltage, Inc,* persuasively supports the determination that the City's policy is unconstitutional.[2]

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[1] See Citizens Research Council of Michigan, Report 343, Statewide Issues on the November General Election Ballot, Proposal 2006-02: Michigan Civil Rights Initiative, September 2006, p 13.

[2] The *Hi-Voltage Court* also addressed whether the City of San Jose's outreach program for women and minority subcontractors was constitutional. While the Court concluded that San Jose's outreach program was unconstitutional, the Court observed that not all outreach programs would be unlawful. Programs available to all on an equal basis would be constitutional: "Plainly, the voters intended to preserve outreach efforts to disseminate information about public employment, education, and contracting not predicated on an impermissible classification." *Hi-Voltage*, 12 P3d at 1085, citing *Domar Electric, Inc v City of Los Angeles*, 885 P2d 934 (1994) as an example of an outreach program not predicated on impermissible factors. Although the City of Grand Rapids' construction policy does contain an outreach component, you have not asked about it and those provisions are therefore not addressed in this opinion.

It must be recognized that programs according race- and sex-based preferences in contracting have been upheld as constitutional under equal protection principles.[1] By adopting Const 1963, art 1, § 26, however, the people chose to prohibit both discrimination disfavoring and preferential treatment favoring persons or groups based on race, sex, color, ethnicity, and national origin. In other words, except under limited circumstances,[2] Michigan treats all individuals equally in the areas of public contracting, education, and employment.

Const 1963, art 1, § 26 thus may be harmonized with the federal and state Equal Protection Clauses, which similarly prohibit such discrimination. See *Washington v Davis*, 426 US 229, 239; 96 S Ct 2040; 48 L Ed 2d 597 (1976); *United States v Virginia*, 518 US 515; 116 S Ct 2264; 135 L Ed 2d 735 (1996).[3] While the Equal Protection Clause has been interpreted as permitting states to consider race or sex in fashioning a remedy to address the effects of past discrimination, see *Wygant v Jackson Bd of Education*, 476 US 267; 274 106 S Ct 1842; 90 L Ed 2d 260 (1986), and *Adarand Constructors, Inc v Pena*, 515 US 200, 236-237; 115 S Ct 2097; 132 L Ed 2d 158 (1995), a state is not required to do so.

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[1] See, e.g., *Western States Paving Co v Washington State Dep't of Transportation*, 407 F3d 983 (CA 9, 2005); *Sherbrooke Turf, Inc*, 345 F3d 964; *Adarand Constructors, Inc v Slater*, 228 F3d 1147, 1155 (CA 10, 2000).

[2] Art 1, § 26 does provide certain exceptions to its application:

> (4) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.
>
> (5) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting.

Section 26 also specifies that federal law or the federal Constitution prevails over any part of art 1, § 26 in conflict with those laws. Const 1963, art 1, § 26(7). This opinion does not address any effect these exceptions might have on the City's program in the absence of specific facts or circumstances upon which to analyze the exceptions' application.

[3] The Equal Protection Clause of the Michigan Constitution, Const 1963, art 1, § 2, is to be interpreted coextensively with the federal Equal Protection Clause, US Const, Am XIV. *Harvey v State*, 469 Mich 1, 6; 664 NW2d 767 (2003); *Crego v Coleman*, 463 Mich 248, 258-259; 615 NW2d 218 (2000); *Vargo v Sauer*, 457 Mich 49, 60; 576 NW2d 656 (1998); *Frame v Nehls*, 452 Mich 171, 183; 550 NW2d 739 (1996), (the Michigan and United States Equal Protection Clauses offer similar protection).

See *Shaw v Reno*, 509 US 630, 654; 113 S Ct 2816; 125 L Ed 2d 511 (1993) ("in the context of a Fourteenth Amendment challenge, courts must bear in mind the difference between what the law permits and what it requires"); *Hi-Voltage, Inc*, 12 P3d at 1087. Indeed, as the Ninth Circuit Court of Appeals observed in upholding the constitutionality of Cal Const, art 1, § 31, "[t]hat the Constitution permits the rare race-based or gender-based preference hardly implies that the state cannot ban them altogether." *Coalition for Economic Equity v Wilson*, 122 F3d 692, 708 (CA 9, 1997) cert den 522 US 963; 118 S Ct 397; 139 L Ed 2d 310 (1997) (emphasis deleted). See also *Coalition to Defend Affirmative Action v Granholm*, 473 F3d 237, 248 (CA 6, 2006) (discussing the relationship between the Equal Protection Clause and art 1, § 26). Here, as in California, the people have chosen to ban preferences altogether.

It is important to emphasize, however, that this does not mean that the City of Grand Rapids is barred from pursuing its policies of ensuring nondiscrimination and equal opportunities within the contracting process. It must do so, however, employing race- and sex-neutral means. See, e.g., *Hi-Voltage, Inc*, 12 P3d at 1085 (observing that Cal Const, art 1, § 31 was not meant to prohibit the dissemination of information about public employment, education, and contracting where it is not predicated on an impermissible classification.)[1] For example, if the City wished to retain a bid discount process, it could amend the definition of a DBE to include only those individuals or firms that demonstrate "economic disadvantage," a criterion that can be determined through application of race-neutral and sex-neutral financial or economic factors.[2] By amending the definition of who qualifies as a

[1] Indeed, the United States Supreme Court has encouraged universities to move away from the use of race and sex preferences in admissions policies. See *Grutter*, 539 US at 342 ("Universities in California, Florida, and Washington State, where racial preferences in admissions are prohibited by state law, are currently engaged in experimenting with a wide variety of alternative approaches. Universities in other States can and should draw on the most promising aspects of these race-neutral alternatives as they develop.").

[2] California instituted an economic incentive program for businesses based solely on economic factors. See Cal Gov Code §§ 14837-14838.

DBE to preclude reliance on race and sex or any of the other impermissible classifications, the City could continue to offer this economic incentive.

It is my opinion, therefore, that Const 1963, art 1, § 26 prohibits the implementation or application of the City of Grand Rapids' bid discount process set forth in Section 5.1(A)(1) of the Administrative Guidelines promulgated pursuant to City Policy 600-12 because the process grants preferential treatment to persons or groups based on race, sex, color, ethnicity, or national origin. Art 1, § 26 does not, however, prohibit the City from maintaining a bid discount process as long as the City amends the process to remove reliance on the unconstitutional factors of race, sex, color, ethnicity, or national origin.

MIKE COX
Attorney General

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

BUDGET: Reduction of funds in the Automobile Theft Prevention Program by Executive
GOVERNOR: Order 2007-3

EXECUTIVE ORDERS:

CONST 1963, ART 5, § 20:

The Governor, having gained the approval of both the House and Senate appropriations committees, may use her Const 1963, art 5, § 20 powers to reduce the spending authority for the Automobile Theft Prevention Authority. The $4,000,000 for which spending authority was removed by Executive Order 2007-3, however, remains in the Automobile Theft Prevention Fund until new authority to spend is obtained pursuant to legislative appropriation; it does not lapse to the General Fund and thus does not result in a direct increase of $4,000,000 to the General Fund.

Opinion No. 7203 April 25, 2007

Board of Directors
Automobile Theft Prevention Authority
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East Lansing, MI 48823

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Genesee County Prosecutor
900 S. Saginaw St.
Flint, MI 48502

Mr. Eric Smith
Macomb County Prosecutor
One South Main St.
Mount Clemens, MI 48013

Ms. Kym L. Worthy
Wayne County Prosecutor
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You have asked whether the Governor may reduce the FY 2007 Department of State Police appropriation contained in 2006 PA 345 and identified as the Auto Theft Prevention Program by $4,000,000 as set forth in Executive Order 2007-3.

First, your question requires examination of several controlling constitutional principles. The Legislature enacts laws and appropriates funds. The executive branch of the government executes the laws and spends appropriated funds for designated purposes. Although the executive branch possesses a certain amount of discretion, it may not under the guise of executing the laws frustrate the Legislature's intent. The executive branch possesses no inherent constitutional power to decline to spend in the face of a clear legislative intent and statutory directive to do so. *Int'l Union, UAW v State of Michigan*, 194 Mich App 489, 501; 491 NW2d 855 (1992).

The Governor's authority to reduce state expenditures derives from Const 1963, art 5, § 20, which provides:

> No appropriation shall be a mandate to spend. The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures authorized by appropriations whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period are based. Reductions in expenditures shall be made in accordance with procedures prescribed by law. The governor may not reduce expenditures of the legislative and judicial branches or from funds constitutionally dedicated for specific purposes.

The Governor has concluded that actual revenues for the current fiscal period will fall below the revenue estimates. As a result, Executive Order 2007-3 was issued pursuant to Const 1963, art 5, § 20 on March 22, 2007, and received the concurrence of the appropriations committees of the House and Senate by March 29, 2007.

Where the approval of the appropriations committees of the House and Senate has not been obtained, neither the Governor nor the Director of the Department of Management and Budget may require a principal department to lapse funds appropriated to that department. OAG, 1979-1980, No

5585, p 445, 447 (October 17, 1979).[1] This analysis is one of long standing. In OAG, 1989-1990, No 6607, p 269, 271 (December 5, 1989), Attorney General Frank J. Kelley commented:

> I have previously addressed the issue of executive branch efforts to reduce legislative appropriations when actual revenues have fallen below revenue estimates. Those opinions concluded that the people have seen fit to severely limit the executive branch's prerogatives. In 1966, for example, Governor George Romney directed the Department of Social Services to withhold full implementation of Phases II and III of the Medicaid program for which appropriations had been made by the Legislature for reasons, in part, of financial problems. OAG, 1967-1968, No 4576, p 17 (February 3, 1967), addressed the validity of Governor Romney's action and concluded that he did not have the authority to limit or delay benefits under a program established by law and for which legislative appropriations had been made. The opinion noted that approval of the appropriations committees of the Legislature was neither sought nor capable of being validly obtained in the absence of any showing that actual state revenues would fall below estimated revenues as required by Const 1963, art 5, § 20.

The Attorney General reaffirmed that position in a December 11, 1991, Letter Opinion to House Speaker Lewis Dodak and Representative Dominic Jacobetti, stating that reductions in the amounts appropriated to departments within the executive branch may not be mandated without the issuance of an order by the Governor approved by the appropriations committees of the House and Senate as required by Const 1963, art 5, § 20.

Turning to the specifics of your question, the Automobile Theft Prevention Authority (ATPA) was created in 1986 PA 10 to reduce automobile theft in Michigan. In 1992, the Legislature made the ATPA a permanent body in 1992 PA 174, MCL 500.6101 *et seq*.

The ATPA is governed by a seven-member board of directors appointed by the Governor and consists of two representatives of automobile insurance purchasers, two representatives from Michigan

[1] But the opinion also noted:

insurance companies, two representatives from law enforcement agencies, and the Director of the Department of State Police. While the ATPA exercises its prescribed statutory powers, duties, and functions independently, the Director of the Department of State Police has supervision of the budgeting, procurement, and administration of employees for the Authority. MCL 500.6103(7).

The ATPA is expressly declared to be a public body corporate and politic. MCL 500.6103(1). It has long been accepted that the Legislature has the authority to give corporate capacity to certain agencies in the administration of civil government. And, in doing so, the Legislature creates neither private corporations nor municipal corporations, but instead a class of artificial entities that have been designated "*quasi* corporations." *Advisory Opinion re Constitutionality of PA 1966, No 346*, 380 Mich 554, 568; 158 NW2d 416 (1968).

The ATPA's primary source of funding is an annual assessment paid by each insurer engaged in writing motor vehicle insurance coverage in Michigan. Each insurer's assessment is "equal to $1.00 multiplied by the insurer's total earned car years of insurance" written in this State during the immediately preceding calendar year. MCL 500.6107(1). The assessments are paid by April 1 each year and "shall be segregated and placed in a fund to be known as the automobile theft prevention fund . . . [to] be administered by the authority." MCL 500.6107(2). According to the ATPA, the annual assessments amounted to approximately $6.0 million annually for 2005 and 2006.[1]

Money in the Automobile Theft Prevention Fund may be used only for automobile theft prevention efforts and is distributed based on need and efficacy as determined by the ATPA. MCL

"On the other hand, because an appropriation is not a mandate to spend, a department or agency should, to the extent possible and consistent with legislative intent, reduce its spending by [implementing] all possible efficiencies and economies."

500.6107(4). "Money in the automobile theft prevention fund shall not be considered state money." MCL 500.6107(5).

Since the creation of the Automobile Theft Prevention Fund, the Legislature has authorized the ATPA's spending within the annual Department of State Police budget. The amounts so authorized are based on the amount of money held in the Automobile Theft Prevention Fund from the assessments received and any other income (such as investment income).

While there is no case precedent involving the ATPA, the bedrock case of *Advisory Opinion re Constitutionality of PA 1966, No 346,* 380 Mich 554, *supra*, examined the constitutional underpinnings of the public body corporate known as the Michigan State Housing Development Authority (State Housing Authority), a body characterized by the Court as a "*quasi* corporation" exercising a proper public purpose. When reviewing receipt of appropriations by the State Housing Authority, the Supreme Court said:

> Moneys of the State housing development authority are not moneys of the State. The funds to be established under the act are trust funds to be administered by the State housing development authority. The State has no beneficial interest in such funds. [380 Mich at 583.]

Thus, funds appropriated to the State Housing Authority lose their state character and cannot be returned to the General Fund by legislative enactment. OAG, 1973-1974, No 4841, p 187 (October 24, 1974), citing *Advisory Opinion* and *Monticello House v Calhoun County,* 20 Mich App 169; 173 NW2d 759 (1969). That same result is required concerning funds appropriated to the ATPA for the same reasons: (a) the ATPA is a public body corporate and politic, serving a public purpose; (b) the ATPA has a

[1] 2006 ATPA Annual Report, p 18.

dedicated revenue stream from auto insurer assessments; and (c) the ATPA's money, as declared by the Legislature, "shall not be considered state money." MCL 500.6107(5).

But even though the monies in the Fund are not state monies,[1] the question arises whether the Authority's expenditure of those monies is still subject to the Governor's Const 1963, art 5, § 20 powers. In the current fiscal year, the ATPA received an appropriation of, and thereby spending authority for, $10,729,400 from the Automobile Theft Prevention Fund. 2006 PA 345, ARTICLE 17, Sec. 102. It is undisputed that this is an expenditure authorized by appropriations as contemplated under Const 1963, art 5, § 20:

> The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures authorized by appropriations whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period are based.

Therefore, Executive Order 2007-3, having gained the approval of both appropriations committees, may validly reduce the spending authority of the ATPA by $4,000,000.

Insofar as your request questions the ability of the Governor to "take[ ] $4,000,000 from the ATPA fund," however, it must be noted that Executive Order 2007-3 does not purport to transfer the $4,000,000 out of the Automobile Theft Prevention Fund.[2] The $4,000,000 would remain in the Fund and the Authority could seek spending authority for the money at some later date. This could be done

[1] While these funds are not state money, nevertheless they are public money.

[2] Your request also cites a substitute to Senate Bill 220 approved by the Senate on March 22, 2007, which would lapse to the General Fund "the amount of $4,000,000.00 reduced for the appropriation in part 1 for auto theft prevention program represents $2,000,000.00 in current year appropriations and $2,000,000.00 in unappropriated fund balances from the auto theft prevention fund." However, the Attorney General typically does not opine on pending legislative bills.

through a supplemental appropriation in the current fiscal period or by including the sum in an appropriation bill for an upcoming fiscal period.

It is my opinion, therefore, that the Governor, having gained the approval of both the House and Senate appropriations committees, may use her Const 1963, art 5, § 20 powers to reduce the spending authority for the Automobile Theft Prevention Authority. The $4,000,000 for which spending authority was removed by Executive Order 2007-3, however, remains in the Automobile Theft Prevention Fund until new authority to spend is obtained pursuant to legislative appropriation; it does not lapse to the General Fund and thus does not result in a direct increase of $4,000,000 to the General Fund.

MIKE COX
Attorney General

ENROLLED SENATE AND HOUSE BILLS SIGNED INTO LAW OR VETOED (2007 SESSION)

Mich. Const. Art. IV, §33 provides: "Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law . . . If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves . . . he shall return it within such 14-day period with his objections, to the house in which it originated."

Mich. Const. Art. IV, §27, further provides: "No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house."

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year."

ENROLLED SENATE AND HOUSE BILLS SIGNED INTO LAW OR VETOED (2007 SESSION)

Public Act No.	Enrolled House Bill	Enrolled Senate Bill	I.E.* Yes / No	Governor Approved Date	Filed Date	Effective Date	Subject
1		191	Yes	3/1	3/1	3/1/07	Occupations; accounting; qualifications for certified public accountants; revise, and provide certain changes to the peer review requirement. **(Sen. R. Richardville)**
2		184	Yes	3/19	3/19	3/19/07	State financing and management; budget; expenditure exceeding appropriation level; require **notification.** **(Sen. R. Jelinek)**
3		166	Yes	3/19	3/19	3/19/07	Appropriations; zero budget; supplemental appropriations; provide for certain fiscal years. **(Sen. R. Jelinek)**
4		014	Yes	3/22	3/22	3/22/07	Agriculture; other; loan repayment for sugar beet cooperatives; extend. **(Sen. J. Barcia)**
5		176	Yes	3/22	3/23	3/23/07	Health facilities; other; appropriated amount of quality assurance assessment collected; increase. **(Sen. D. Cherry)**
6		221	Yes	4/30	4/30	4/30/07	Appropriations; supplemental; negative supplemental school aid bill; provide for fiscal year 2006-2007. **(Sen. R. Jelinek)**
7		404	Yes	5/4	5/4	5/4/07	Appropriations; supplemental; multidepartment supplemental for fiscal year 2006-2007; provide for. **(Sen. R. Jelinek)**
8	4143		Yes	5/10	5/11	5/11/07	Watercraft; violations; certain marine safety misdemeanor violations; designate as state civil infraction. **(Rep. S. Bieda)**

* - I.E. means Legislature voted to give the Act immediate effect.
** - Act takes effect on the 91st day after *sine die* adjournment of the Legislature.
*** - See Act for applicable effective date.
+ - Line item veto
# - Tie bar

MICHIGAN ADMINISTRATIVE CODE TABLE
(2007 SESSION)

MCL 24.208 states in part:

"Sec. 8. (1) The State Office of Administrative Hearings and Rules shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(i) Other official information considered necessary or appropriate by the State Office of Administrative Hearings and Rules."

The following table cites administrative rules promulgated during the year 2000, and indicates the effect of these rules on the Michigan Administrative Code (1979 ed.).

MICHIGAN ADMINISTRATIVE CODE TABLE
(2007 RULE FILINGS)

R Number	Action	2007 MR Issue	R Number	Action	2007 MR Issue	R Number	Action	2007 MR Issue
205.56	*	6	338.3123	*	4	388.5	A	6
205.72	*	6	338.3125	*	4	388.6	A	6
205.126	*	6	338.3132	*	4	388.7	A	6
205.127	*	6	338.3154	*	4	388.8	A	6
205.136	*	6	338.3161	*	4	388.9	A	6
281.421	A	3	338.3162	*	4	388.1	A	6
281.422	A	3	338.3162b	*	4	388.11	A	6
281.423	A	3	338.3162c	*	4	388.12	A	6
281.424	A	3	338.3162d	*	4	388.13	A	6
281.425	A	3	339.22203	*	2	388.14	A	6
281.426	A	3	339.22213	*	2	388.15	A	6
281.427	A	3	339.22601	*	2	388.16	A	6
281.428	A	3	339.22602	*	2	388.17	A	6
281.429	A	3	339.22603	*	2	388.18	A	6
325.2651	*	3	339.22604	*	2	400.9101	*	2
325.2652	*	3	339.22605	*	2	400.9306	*	2
325.2653	*	3	339.22606	A	2	400.9401	*	2
325.2654	*	3	339.22607	*	2	400.9501	*	2
325.2655	*	3	339.22609	*	2	400.12101	*	2
325.2656	*	3	339.22613	*	2	400.12202	*	2
325.2657	*	3	339.22615	*	2	400.12214	A	2
325.2658	*	3	339.22617	*	2	400.12310	*	2
325.60025	*	3	339.22631	*	2	400.12312	*	2
336.1660	A	2	339.22639	R	2	400.12605	*	2
336.1661	A	2	339.22641	R	2	408.43a	*	4
338.471a	*	4	339.22645	*	2	408.43i	*	4
338.472	*	4	339.22651	*	2	408.43k	*	4
338.473	*	4	339.22652	A	2	408.43m	*	4
338.473a	*	4	339.22653	R	2	408.43q	*	4
338.473d	*	4	339.22654	R	2	408.61	*	8
338.474a	*	4	339.22655	R	2	408.65	*	8
338.475	*	4	339.22659	*	2	408.802	*	8
338.479a	*	4	339.22663	R	2	408.806	*	8
338.489	*	4	339.22664	R	2	408.833	*	8
338.3041	*	4	339.22665	*	2	408.852	*	8
338.3043	*	4	388.1	A	6	408.882	*	8
338.3044	*	4	388.2	A	6	408.891	*	8
338.3102	*	4	388.3	A	6	408.42602	*	5
338.3120	*	4	388.4	A	6	408.42605	*	5

(* Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)

R Number	Action	2007 MR Issue	R Number	Action	2007 MR Issue	R Number	Action	2007 MR Issue
408.42608	*	5	421.1108	*	4	432.21520	*	5
408.42609	*	5	421.1109	*	4	432.21609	*	5
408.42616	*	5	421.1110	*	4	432.21617	*	5
408.42624	R	5	421.1111	*	4	432.21621	*	5
408.42625	R	5	421.1301	*	4	432.21622	*	5
408.42628	*	5	421.1301	*	4	432.21623	*	5
408.42629	*	5	421.1302	*	4	432.21805	*	5
408.42634	*	5	421.1304	*	4	432.21811	*	5
408.42636	*	5	421.1305	*	4	432.22004	*	5
408.42648	*	5	421.1307	*	4	432.22005	*	5
408.42651	*	5	421.1314	*	4	432.22006	*	5
408.42655	*	5	421.1315	*	4	432.22007	*	5
408.42801	A	5	421.1316	*	4	436.1629	*	9
408.42804	A	5	431.2090	*	9	460.2701	A	3
408.42806	A	5	431.2120	*	9	460.2702	A	3
408.42809	A	5	431.3075	*	9	460.2703	A	3
418.56	*	4	431.3110	*	9	460.2704	A	3
418.10107	*	6	431.4001	*	9	460.2705	A	3
418.10202	*	6	431.4180	*	9	460.2706	A	3
418.10401	*	6	432.21305	*	5	460.2707	A	3
418.10404	*	6	432.21313	*	5	500.2211	A	9
418.10416	*	6	432.21316	*	5	500.2212	A	9
418.10504	A	6	432.21317	*	5	550.111	A	4
418.10505	A	6	432.21326	*	5	550.112	A	4
418.10902	*	6	432.21327	*	5	550.301	A	4
418.10922	*	6	432.21331	*	5	550.302	A	4
418.101002	*	6	432.21332	*	5	500.2201	A	4
418.101002b	A	6	432.21333	*	5	500.2202	A	4
418.101004	*	6	432.21335	*	5			
418.101005	*	6	432.21336	*	5			
418.101016	*	6	432.21406	*	5			
418.101017	R	6	432.21408	*	5			
418.101018	R	6	432.21410	*	5			
418.101019	R	6	432.21412	*	5			
418.101502	R	6	432.21413	*	5			
418.101504	*	6	432.21416	*	5			
421.1101	*	4	432.21417	*	5			
421.1103	*	4	432.21418	*	5			
421.1104	*	4	432.21516	*	5			

(***** Amendment to Rule, **A** Added Rule, **N** New Rule, **R** Rescinded Rule)

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